

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**SHARON K MISSEL**  
Claimant

**APPEAL NO. 18A-UI-06888-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**OC: 05/27/18**  
**Claimant: Respondent (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 13, 2018, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on May 18, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on July 11, 2018. Claimant Sharon Missel participated. Gretchen Goettig represented the employer and presented additional testimony through Derek Lindle. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 10 into evidence.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Sharon Missel was employed by Per Mar Security & Research Corporation (Per Mar) as a full-time security officer from 2016 until May 18, 2018, when Derek Lindle, Site Supervisor, discharged her from the employment.

In the summer of 2017, Ms. Missel was assigned to provide security services at Palmer College of Chiropractic in Davenport. At about the same time, Derek Lindle became Site Supervisor for the Palmer account. Michael Brown was at all relevant times Palmer College Director of Safety and Security. Shift Supervisor Ryan Messina became Ms. Missel's immediate supervisor toward the end of 2017. Ms. Missel's work hours were 7:00 a.m. to 3:00 p.m.

Ms. Missel's post assignment was the security desk in the Palmer College Welcome Center. The Welcome Center was the main entrance to the college. Ms. Missel was responsible for all facets of maintaining security at the entrance. Her duties included greeting people as they entered the facility, monitoring use of the card access machine to ensure only authorized persons gained entrance, issuing visitor badges, and connecting visitors with the appropriate

people within the college. Her duties included monitoring three surveillance monitors for activity detected by 80 surveillance cameras and dispatching other Per Mar Security personnel as needed. Her duties included maintaining a daily activity log, issuing parking permits, and facilitating response to parking violations. At the time Ms. Missel had interviewed for the Palmer College Welcome Center post, the employer emphasized the need for Ms. Missel to confront people as needed to maintain security and referenced a predecessor's inability to confront people as needed as a deficit. Ms. Missel could at time come off as abrupt in manner and tone. At such time, Mr. Lindle was not inclined to give Ms. Missel the benefit of the doubt.

The employer's decision to discharge Ms. Missel followed a May 15, 2018 text message exchange between Ms. Missel and her coworker, Per Mar Security Officer Nora Dietz. Ms. Dietz had started work on the Palmer College account in late 2017. Ms. Missel and Ms. Dietz had worked together on four prior Per Mar Security assignments and considered each other friends. Ms. Missel and Ms. Dietz were not always mindful of the boundaries between their personal friendship and their work relationship. The text message exchange was prompted by Mr. Messina suggesting that Ms. Missel had not properly trained Ms. Dietz in how to complete the shift log. On May 15, Mr. Messina approached Ms. Missel at work and stated, "I through you showed Nora how to do the shift log. She said she did not know how to do it." Ms. Missel provided a one-word response, "baloney." After Ms. Missel completed her shift, she initiated a text message exchange in which she took Ms. Dietz to task over the training issue. The exchange was as follows:

Missel: Did you really tell your bosses that you couldn't do shift notes?

Dietz: What???

Missel: That's what Ryan told me today.

Dietz: No!! I said I hadn't been shown the entire process or how to do it

Missel: We did it together more than once. What part don't you understand?

Dietz: Wow.... that even strengthens my decision

Missel: Again, what part don't you understand? Core values...Include accountability. Why you think you shouldn't have to do anything that everyone else has to do because you don't want to. And by you after 6 months of reading shift notes and I know you can type and spell and send e-mails, you simply don't know how to do it? That's B.S. being unable to answer a simple question, it just proves I'm right. You live in denial. How many times did we go over it? Now you're going to say that

Dietz: For one thing I NEVER told Ryan I couldn't do shift notes. What I said to him EXACTLY was that he did NOT send me a copy of the page I needed to do shift notes on [t]he weekend. And I've never done one for the day. Start to finish. By myself. No help. Meaning pulling one up from where ever it comes from, like where it opens up from, and when done for the day, who all to send it to and how to do that!!! Never was shown! So before you start insulting someone and being a jerk to me, why don't you get your facts straight!! No, I never told him I couldn't DO them, I type stuff in them on your break all the time!! I just need to do one start to finish. Excuse me if I'm not confident doing one all by myself and I asked for a little bit of help so that I can do it right instead of messing up. Somehow I don't seem to think this is really any of your business anyway. I asked Ryan, not you. I don't see why he needed to tell you any of this. And this will be brought up to my bosses. All of them

On May 16, 2018, Ms. Dietz reported the text message exchange to Mr. Lindle, the site supervisor. Ms. Dietz provided a copy of the text message exchange to Mr. Lindle and provided a written statement. Mr. Lindle did not deem it necessary to speak with Ms. Missel prior to making the decision to discharge her from the employment. On May 18, 2018, Mr. Lindle met with Ms. Missel for the purpose of discharging her from the employment. At that time, Mr. Lindle presented Ms. Missel with a Disciplinary/Counseling Report that read as follows:

On Tuesday, May 15, 2018, at around 1530 hrs, you sent a co-worker some texts questioning the fact that she had asked her immediate supervisor for some help. The text messages were rude and demeaning causing her to feel disrespected. The conversation that you were referring to was between her and her Supervisor. It did not concern you and you had no authority or reason to have this conversation with her.

It has also come to our attention from the client that you [were] recently rude on the phone and hung up on him. Due to your unprofessional behavior with their employees, the client has asked for your removal.

You were previously written up for insubordination in October 2017 and for unprofessionalism on the radio in January 2018. However, you have continued to present yourself in an unprofessional and disrespectful manner. Per Mar promotes respect for fellow coworkers and clients in a professional manner, and this continued poor behavior on your part impacts your employment. Therefore, your employment is terminated effective immediately.

Upon receipt of the Disciplinary/Counseling Report that discharged her from the employment, Ms. Missel wrote her response to the allegations in space provided on the document. Ms. Missel's written response was as follows:

Nora Dietz and I talk all the time off the clock. We go out + talk + eat + text. I was upset with her for lying. I can't believe this one-sided assault on me for texting a friend after work. Nobody bothered to ask my side of it or show the numerous texts she sent me.

#2 I did not hang up on Mike Brown. I asked him a question + he answered in a smart alec[k] manner + I said, "Ok, Bye." Then I hung up. This is absolute garbage.

Nora Dietz sends me pics of naked men during work hours and pics of herself scantily clad + topless + I'm somehow harassing someone who I called a friend? This was nothing more than 2 friends having a dispute. What I do on my spare time w/ friends is none of your business.

If I was unprofessional after I was written up then cite examples. There are none.

As indicated in the discharge document, Mr. Lindle considered earlier concerns when making the decision to discharge Ms. Missel from the employment. On January 31, 2018, Mr. Messina issued a written reprimand to Ms. Missel based on his perception that Ms. Missel had been unnecessary abrupt when speaking with Security Officer Howard Thompson on January 30. Mr. Thompson had called Ms. Missel on the communication radio. Ms. Missel was required to wear an ear piece that fed the radio communication directly into her ear. Mr. Thompson had a police scanner playing in the background and the scanner was loud in Ms. Missel's ear. Ms. Missel asked Mr. Thompson if he could turn down the background noise. When Mr. Thompson responded, "10-4 it's the police scanner." Ms. Missel then responded, "I don't care what it is, just turn it down." Mr. Messina and Mr. Lindle each heard the radio communication. About 45 minutes later, Mr. Messina chastised Ms. Missel. Mr. Messina stated, "I don't want to hear you talk like that on the radio." Ms. Missel explained that the loud sound in her ear had prompted her to radio utterance.

On October 20, 2017, Ms. Missel's prior supervisor, Joel Hasenmiller, issued her a written reprimand for sending him an email message on October 19 that Mr. Hasenmiller deemed inappropriate. On October 19, Mr. Hasenmiller was recognized by Mr. Brown and Per Mar for exceptional service and was awarded a half day off with pay. Before Ms. Missel left, Mr. Hasenmiller did not clearly communicate how Ms. Missel should report her time to ensure that she would be paid. Ms. Missel clocked out because she thought that was what was

expected. Mr. Hasenmiller was upset that Ms. Missel clocked out. Ms. Missel became upset that she would not be paid for her time and sent a demanding email message.

### REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Administrative Code rule 871-24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See Iowa Administrative Code rule 871-24.32(4).

The weight of the evidence in the record fails to establish misconduct in connection with the employment. The weight of the evidence does not support Mr. Lindle's characterization of Ms. Missel as "the workplace bully." The evidence indicates that Ms. Missel did at times come off as overly assertive or aggressive. That same quality appears to have been a quality the employer and the head of Palmer Safety and Security valued early in the assignment. The employer's decision to discipline and discharge Ms. Missel in connection with the May 15 text messages discounted and disregarded important context. It is worth noting that Mr. Messina specifically involved Ms. Missel in the matter and did so in a way that appeared to fault Ms. Missel for an alleged failure to properly train Ms. Dietz. The employer's discipline and discharge decision wholly discounted the history between these two co-workers who were also friends and who had a history of overstepping each other's comfort zones. The employer's decision to discipline and discharge Ms. Missel wholly disregarded any explanation, justification or input Ms. Missel provided. The evidence establishes a good faith error in judgment in Ms. Missel's approach to the training issue brought to her attention on May 15, not an intent to harass, bully, or engage in conduct contrary to the employer's interests. The administrative law judge notes that the employer elected not to present testimony from Ms. Dietz, which testimony likely would have provided clearer picture of the context of the interaction. The employer presented insufficient evidence to prove that Ms. Missel had hung up on Mr. Brown or even that Mr. Brown had requested her removal from the assignment. The weight of the evidence fails to establish misconduct in connection with the earlier incidents that factored in the discharge. Each such incident occurred in a context that the disciplinary action conveniently disregards.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Missel was discharged for no disqualifying reason. Accordingly, Ms. Missel is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The June 13, 2018, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs