

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHLEEN J SEIBERT**  
Claimant

**APPEAL NO. 13A-UI-03168-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PELLA REGIONAL HEALTH CENTER**  
Employer

**OC: 02/10/13**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Kathleen Seibert filed a timely appeal from the March 11, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 15, 2013. Ms. Seibert participated. Ashley Arkema represented the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kathleen Seibert was employed by Pella Regional Health Center as a part-time patient care technician from 1998 until February 14, 2013, when Carla Berg, Director of Medical Surgical in the Intensive Care Unit discharged her from the employment. The final incident that triggered the discharge was a patient's complaint to an attending physician and to Team Leader that Ms. Seibert had been rude and had made a negative comment about her employment at Pella Regional Health Center. The patient made the allegation on February 13, 2013, as the patient was being discharged from the hospital. The patient had been in the hospital, and in Ms. Seibert's care, since February 8, 2013. The patient alleged that Ms. Seibert had been the only staff member who did not introduce herself to the patient. The patient alleged that Ms. Seibert had instead said, "I know you." The patient also alleged that Ms. Seibert had said that she did not like working at Pella Regional, that it was just a job. The patient did not say when during her stay these things allegedly occurred or provide greater context. The employer did not speak to Ms. Seibert to see what she had to say about the allegations.

Ms. Seibert had received prior reprimands for alleged rudeness to patients and for making negative remarks about Pella Regional Health Center. The most recent reprimand had been issued in June 2012 and followed two patient complaints. One of the complaints was that Ms. Seibert had not shown compassion. The other complaint was about Ms. Seibert's negative remark about a hospital fundraiser. As Ms. Seibert was wheeling a patient out, she told the patient they would have to take a different route due to a Legacy Dinner put on for the wealthy

and the snobs. When Ms. Seibert found out the patient's husband was a dentist, someone who presumably would be in the same socioeconomic class as the people attending the Legacy Dinner, she said no more.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

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 871 IAC 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 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish misconduct in connection with the final incident that triggered the discharge. The employer had the ability to present testimony through at least Dr. Close or the Team Leader, but did not do so. The employer had the ability to present testimony or even a written statement from the patient, even with the patient's name expunged to protect privacy, but that employer did not do that. The employer's investigation of the matter was flawed and incomplete. The employer did not interview Ms. Seibert about the matter. The employer did not collect a written statement from the patient, the doctor or the Team Leader. The employer simply assumed the allegations to be true. The administrative law judge cannot make such leaps. Even if Ms. Seibert had said she did not like to work at Pella Regional and that it was just a job, such conduct would not rise to the level of misconduct in connection with the employment that would disqualify her for unemployment insurance benefits. It is human nature to complain about one's work. The allegation was that Ms. Seibert spoke only of her feelings about working at the hospital. In addition, even if Ms. Seibert failed to introduce herself to the patient, that conduct would not rise to the level of misconduct that would disqualify Ms. Seibert for unemployment insurance benefits.

Because the employer failed to present sufficient evidence to prove misconduct in connection with the final incident that triggered the discharge, the evidence fails to establish a *current act* of misconduct upon which disqualification might be based. The next most recent alleged incidents that factored in the discharge occurred eight months earlier. In the absence of a current act, the administrative law judge need not further consider the prior allegations.

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

**DECISION:**

The Agency representative's March 11, 2013, reference 01, decision is reversed. 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

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