

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DENISE MCCOMBS
Claimant

APPEAL NO. 20A-UI-01623-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEN MEMORIAL HOSPITAL
Employer

OC: 01/19/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Denise McCombs filed a timely appeal from the February 13, 2020, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. McCombs was discharged on January 17, 2020 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on March 10, 2020. Ms. McCombs participated. Brian Haase represented the employer and presented additional testimony through Stacey Fobian and Jill Grover. Exhibits 1 through 8, A through J, O through U, and W were received into evidence.

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: Denise McCombs was employed by Allen Memorial Hospital as a CT and MRI Technologist from 1991 until January 17, 2020, when the employer discharged her from the employment. The employer's decision to discharge Ms. McCombs from the employment was triggered by a patient's survey response concerning a purported interaction with Ms. McCombs at some point in November 2019. The employer declines to disclose the date of the interaction. The employer reviewed the patient's survey response on January 10, 2020 in the course of reviewing patient surveys submitted in December 2019. The crux of the patient's complaint was that the patient felt Ms. McCombs did not do enough to communicate with the patient and to place the patient at ease at the time of the interaction. This was the first patient complaint the employer had received regarding Ms. McCombs in the course of Ms. McCombs' 28 years of employment with the employer and was completely out of keeping with Ms. Combs' caring approach to patients. The employer met with Ms. McCombs on January 17, 2020, but declined to disclose the date of service or other pertinent details sufficient to allow Ms. McCombs to provide a meaningful response to the patient's concern. The next most recent incidents that factored in the discharge occurred on November 16 and 17, 2019 and were addressed by a reprimand issue on November 27, 2019. In those instances, Ms. McCombs had deviated from

the physician's order when performing two scans due to not carefully reviewing the order prior to conducting the scan. The employer considered earlier conduct and disciplinary action when making the decision to discharge Ms. McCombs from the employment.

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 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).

The evidence in the record establishes a discharge for no disqualifying reason. The employer's evidence concerning the final purported incident that triggered the discharge does not rise above mere allegation. The employer unreasonably declined to provide Ms. McCombs information sufficient to allow her to present a meaningful response to the purported isolated concern with her bedside manner at some non-specific point in November 2019. The employer took the same approach to the appeal hearing and erroneously overstated HIPAA requirements as justification for its failure to present appropriate evidence to prove a current act of misconduct in connection with the employment. Because the evidence fails to establish a current act of misconduct, Ms. McCombs is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits. Because the evidence fails to establish a current act of misconduct, the administrative law judge need not consider the earlier concerns or discipline.

DECISION:

The February 13, 2020, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn