

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SNODGRASS, DOMONIQUE, R
Claimant

APPEAL NO. 10A-UI-16401-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOSPICE OF CENTRAL IOWA - METRO
Employer

**OC: 10/24/10
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 November 22, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 20, 2011. The claimant participated. Cara Johnson represented the employer and presented additional testimony through, Shannon Benson and Connie Goff. Exhibits One through Five were received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-16402-JTT.

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: Domonique Snodgrass was employed by Hospice of Central Iowa as a full-time hospice aide from 2007 until October 25, 2010 when Shannon Benson, Team Manager, discharged her from the employment for failure to complete an annual training session. Ms. Benson was Ms. Snodgrass's immediate supervisor. The particular training session was one required by the employer, but not mandated by law. The training session would last two hours. The training session was offered four different times during 2010: on April 29, June 24, August 26, and October 21. The employer regularly provided two types of electronic notice to employees regarding when the competency training would be offered.

On October 11, 2010, the employer approved Ms. Snodgrass's request for time off that included the dates of October 21-24. Mr. Snodgrass intended to travel with a couple family members from her home in Prairie City to Red Oak, some 2 1/2 hours away.

On October 13, during a staff meeting, Ms. Benson notified Ms. Snodgrass that since she had not completed the annual competency training, she would have to complete the training on October 21 in order to continue with her employment. Despite this notice and directive,

Ms. Snodgrass elected to skip the training and instead left for Red Oak the morning of October 21. Ms. Snodgrass returned from vacation the evening of October 24.

The trainer notified Ms. Benson when Ms. Snodgrass did not participate in the October 21 training. On October 25, Ms. Snodgrass was scheduled to return to work. Ms. Benson had Ms. Snodgrass meet with her instead and discharged her from the employment. There was no other basis for the decision to discharge Ms. Snodgrass from the employment other than her failure to complete the competency training session.

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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee’s failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer’s request in light of the circumstances, along with the worker’s reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence establishes that Ms. Snodgrass was negligent in failing to complete the annual competency training that the employer required in order for her to continue in employment. The evidence fails to support Ms. Snodgrass's assertion that she did not know until October 13 when the training sessions for 2010 are being offered. Given Ms. Snodgrass's failure to complete the training during the earlier sessions offered in 2010, and despite the vacation approval of October 11, Ms. Benson’s directive that Ms. Snodgrass complete the training on October 21, 2010 was reasonable. Ms. Benson's intentional failure to complete the training was unreasonable under the circumstances. Thus, there was an isolated incident of insubordination. But there was not a pattern of insubordination. Though Ms. Snodgrass was negligent in failing to complete the competency training, this was not sufficient to establish a pattern of carelessness and/or negligence that would indicate a willful or wanton disregard of the employer's interests. Thus, there was some measure of misconduct and the employer was within its authority to end the employment, the misconduct in question did not rise to the level of misconduct necessary to disqualify Ms. Snodgrass for unemployment insurance benefits. The claimant is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits paid to the claimant.

DECISION:

The Agency representative’s November 22, 2010, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs