

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ONDREA L HOLMES**  
Claimant

**APPEAL NO. 06A-UI-10760-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COVENANT MEDICAL CENTER**  
Employer

**OC: 09/17/06 R: 03  
Claimant: Appellant (2)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Ondrea Holmes filed a timely appeal from the October 27, 2006, reference 07, decision that denied benefits. After due notice was issued, a hearing was held on November 21, 2006. Ms. Holmes participated. Human Resources Representative Kris Marmie represented the employer.

**ISSUES:**

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

Whether the claimant has been able and available for employment since she established her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ondrea Holmes commenced her part-time employment with Covenant Medical Center in July 2006 and worked as a Home Health Aid until September 12, when the employer eliminated her hours because a particular client no longer required home healthcare. At the time Ms. Holmes' hours were eliminated, she had an understanding with the employer that the lack of hours would be temporary and that hours would subsequently become available. On September 21, the employer advised Ms. Holmes that another home healthcare position had become available. The position would require Ms. Holmes to travel to clients' homes for approximately two-hours at a time, for a total of 20-30 hours per week. On September 22, Ms. Holmes received notice from the Iowa Department of Transportation that her driver's license would be suspended effective October 1, due to an unpaid traffic fine. Ms. Holmes' license continues under suspension because she has not yet paid the fine. At the end of September, Ms. Holmes and the employer agreed that Ms. Holmes would be placed in the new home healthcare position and Ms. Holmes commenced training for the new position. The new position would involve, among other responsibilities, transporting clients as needed to appointments etcetera. On October 5, Ms. Holmes notified the employer that she would not be able to work on October 5 or 6 because

she lacked transportation. Ms. Holmes had otherwise arranged for several family members to transport her to and from work. On October 9, Ms. Holmes spoke to her supervisor about license suspension and her plan to pay the fine on October 20, when she received her next paycheck. The supervisor agreed to assign Ms. Holmes to available home healthcare clients who would need to be transported. On October 10, Ms. Holmes received a letter from the employer indicating that she had been discharged from the employment because she lacked the requisite driving privileges.

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

The first question is whether the evidence in the record establishes that Ms. Holmes was discharged for misconduct in connection with the employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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). 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 greater weight of the evidence in the record indicates no misconduct in connection with the employment. The evidence does not indicate a connection between the speeding ticket and the employment. The evidence indicates that the license suspension was temporary, that the only basis for the suspension was the nonpayment of a fine, that Ms. Holmes lacked funds to pay the ticket so that she could get her driving privileges reinstated, that the employer contributed to the lack of funds by eliminating Ms. Holmes' work and income, that Ms. Holmes could perform her duties during the temporary loss of license, and that Ms. Holmes' immediate supervisor had specifically agreed to accommodate Ms. Holmes' temporary situation.

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

The remaining question is whether Ms. Holmes has been able and available for work since establishing her claim for benefits.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The greater evidence indicates that, aside from October 5-6, Ms. Holmes was at all times able and available for work. Despite Ms. Holmes' loss of license due to non-payment of a fine, Ms. Holmes had readily available means of transportation. No disqualification will enter.

**DECISION:**

The Agency representative's October 27, 2006, reference 07, 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. The claimant has been able and available for work since establishing her claim for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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