

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REYNOLDS, EMILY, R**  
Claimant

**APPEAL NO. 13A-UI-03161-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS DEVELOPMENT**  
Employer

**OC: 02/10/13**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 11, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 15, 2013. Claimant Emily Reynolds participated and presented additional testimony through Amanda Coffey. Emily Herron represented the employer and presented additional testimony through Diana Vogel.

**ISSUE:**

Whether Ms. Reynolds 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: Genesis Development provides home and community based support services to disabled clients. Emily Reynolds was employed by Genesis Development as a part-time Community Support Specialist from 2011 until February 13, 2013, when Emily Herron, Human Resources Director, discharged her from the employment for alleged Medicaid fraud. Diana Vogel, Team Leader, was Ms. Reynolds' immediate supervisor. Ms. Reynolds worked out of the employer's Adel office. Ms. Reynolds' duties involved making sure that clients got to and from planned activities, assisting clients with shopping, and otherwise assisting clients as needed. Ms. Reynolds was required to accurately document the services she provided to clients and to accurately document the time she spent with clients so that the employer could bill Medicaid or another appropriate entity for the time. Ms. Reynolds had received training in how to document her time with a client. Ms. Reynolds had been trained that for clients whose services were billed to a particular agency, such as the client in question, that she was to round up her time to the next quarter hour. Otherwise, Ms. Reynolds understood that she was to accurately record her time to the minute. Ms. Reynolds would generally report her time on each day she worked.

On Friday, February 8, 2013, Ms. Reynolds was supposed to work with a particular client from 1:00 p.m. to 3:00 p.m. At 2:00 p.m., the client telephoned Diana Vogel, Ms. Reynolds' supervisor, because the client was delighted with her own efforts that day and wanted to share that with Ms. Vogel. The client was alone at the time and Ms. Reynolds had already departed.

Ms. Vogel had need to visit the complex where the client lived to meet with another client who resided in the same complex. At about 2:17 p.m., Ms. Vogel arrived at the complex where the clients lived and observed Ms. Reynolds' car in the driveway. Ms. Reynolds was in the car. Ms. Reynolds was just returning from giving a friend a ride home to the same complex. Ms. Reynolds had left the client's home early to go get the friend. Ms. Vogel observed Ms. Reynolds park her car. Ms. Vogel entered the complex to meet with a different client and had no further contact with Ms. Reynolds that day. Ms. Vogel decided to wait to see what time Ms. Reynolds documented as her time with the client.

On Sunday, February 10, Ms. Reynolds logged on to the employer's Internet-based time-keeping site and reported her time with the client on Friday, February 8 as 1:00 p.m. to 3:00 p.m. Ms. Vogel noted the same day that Ms. Reynolds had overstated her time with the client.

On Monday, February 11, Ms. Vogel spoke to Ms. Reynolds at the Adel office. Ms. Vogel told Ms. Reynolds that she knew Ms. Reynolds had not been with the client until 3:00 p.m. and that Ms. Reynolds would have to change the time she had documented as time she spent with the client. Ms. Reynolds asserted that she had been with the client later than 2:00 p.m. on Friday, February 8. Ms. Reynolds made no mention of being present for the client's 2:00 p.m. phone call to Ms. Vogel. Ms. Reynolds then told Ms. Vogel that she had left the complex to collect her friend and take her friend back to the complex, where the friend also lived. After speaking with Ms. Vogel, Ms. Reynolds changed her documentation of the time she spent with the client to indicate that she had been with the client until 2:15 p.m. Ms. Vogel observed this change and observed that it still did not accurately reflect when Ms. Reynolds must have left the client's home, prior to the client's 2:00 p.m. phone call to Ms. Vogel. Ms. Vogel brought the matter to the attention of her own supervisor, Catherine Miller, Community Living Director.

On Wednesday, February 13, Emily Herron, Human Resources Director, and Ms. Vogel met with Ms. Reynolds at the employer's Adel office. Ms. Herron asked Ms. Reynolds why she had left the client's home early. Ms. Reynolds admitted that she had left the client's home early, but said she had done so because the client no longer wished for her to be there. Ms. Reynolds said that she had subsequently *forgotten* what time she had left the client's home and had documented the time she was scheduled to spend with the client as the time she actually spent with the client. Ms. Reynolds indicated she had done the same thing on prior occasions. Ms. Herron asked Ms. Reynolds whether she understood that the documentation of her time with the client was the time the employer would report to Medicaid for reimbursement. Ms. Reynolds asked Ms. Herron whether the employer had reported her for Medicaid fraud. Ms. Herron told Ms. Reynolds that because the employer deemed her to have falsified timekeeping documentation, Ms. Reynolds was subject to immediate discharge from the employment.

#### **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 weight of the evidence establishes that Ms. Reynolds knowingly and intentionally misreported her time spent with the client in order to be paid for service time she had not provided to the client. The weight of the evidence indicates that Ms. Reynolds left the client's home *before* 2:00 p.m. on Friday, February 8, after spending less than an hour with the client. Ms. Reynolds was supposed to spend two hours with the client. Ms. Reynolds did not report the early departure to her supervisor. The only way the supervisor found out about the early

departure was through the client's 2:00 p.m. telephone call to Ms. Vogel. Ms. Vogel was able to confirm that Ms. Reynolds had left the client's home early by actually going to the complex where the client resided. There she saw Ms. Reynolds' car. Ms. Reynolds was just returning to the facility from a non-work related trip to collect her friend.

The administrative law judge finds not credible Ms. Reynolds' assertion that when she reported her work time on Sunday, *just two days after the Friday shift*, she could not remember that she had spent less than an hour with the client. The weight of the evidence establishes that Ms. Reynolds knowingly and intentionally misrepresented the time she had spent with the client as the two hours she was supposed to have spent with the client. Even after Ms. Vogel confronted Ms. Reynolds about the inaccurate time report, Ms. Reynolds again knowingly and intentionally misstated her time as at least a quarter hour more than she had spent with the client. At the time of both reports, Ms. Reynolds knew that the employer would use her time report as the basis for billing for services provided to the client.

Ms. Reynolds makes the argument that the misstatement of her time was a mistake. As indicated above, the administrative law judge finds that argument not credible. Ms. Reynolds makes the additional argument that whatever she did, others did worse and continued with their employment. The administrative law judge finds that argument by-and-large irrelevant. The employer need only prove that Ms. Reynolds engaged in misconduct. Ms. Reynolds makes the further assertion that she was discharged based on an earlier allegation she had made of sexual harassment. The weight of the evidence indicates there is no merit to that argument and that Ms. Reynolds was discharged based on her intentional misstatement of time spent serving clients. The fraudulent documentation, if not caught by the employer as it was here, opened the employer to allegations of and liability for fraudulent billing practices. Ms. Reynolds had worked for the employer long enough to understand that.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Reynolds was discharged for misconduct. Accordingly, Ms. Reynolds is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Reynolds.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

**DECISION:**

The Agency representative's March 11, 2013, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

This matter is remanded to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs