

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NASHA S RICHARD
Claimant

APPEAL NO. 13A-UI-12879-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 10/06/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Nasha Richard filed a timely appeal from the November 19, 2013, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on December 10, 2013. Ms. Richard participated. Tiffany Adams represented the employer and presented additional testimony through Lynnette Spilman.

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: Nasha Richard was employed by ABCM Corporation as a part-time dietary aide from March 14, 2013 until September 3, 2013, when Tiffany Adams, Human Resources Coordinator, discharged her from the employment for failing to complete required computer-based training. Ms. Richard's immediate supervisor was Lynnette Spilman, Food Service Supervisor.

The employer requires employees to complete monthly computer-based training as a condition of continuing in the employment. The employer makes the training materials available to employees 90 days prior to the deadline for completion of the training. The employer then gives employees a 30-day grace period after the training is due to complete the training before the employer moves forward with disciplining the employee for failure to complete the training. The employer pays employees their regular pay rate while they complete the required training. The employer made a computer available to employees for use in completing the training and for other work-related purposes. If for some reason the general use computer was unavailable, Ms. Spilman made her computer available to Ms. Richard and others so that they could complete the required training by the deadline.

On May 14, 2013, the employer issued a reprimand to Ms. Richard when Ms. Richard failed to complete required computer-based initial HIPAA training that had been assigned to her at the time of hire with a March 31, 2013 deadline for completion.

The employer issued a second reprimand to Ms. Richard on June 7, 2013, when Ms. Richard again failed to complete required HIPAA training that was to be completed by March 31, 2013 and corporate compliance training that was to be completed by April 30, 2013.

The employer discharged Ms. Richard from the employment on September 3, 2013 after she failed to complete required computer-based training regarding hazard communication and fire safety. Both trainings were due on July 31, 2013 and had been made available to Ms. Richard on May 1, 2013.

Ms. Richard had three weeks during the employment when she was scheduled to work 36-37 hours in the week. Those weeks were the weeks that ended June 29, 2013, July 13, and August 3, 2013. Ms. Richard was otherwise scheduled to work substantially less than full-time hours, leaving her with time to complete the required training.

At the end of July or beginning of August, Ms. Richard experienced flooding in her home that eventually required her to relocate to a new home. On the day of the discharge, Ms. Richard had reported to the workplace to indicate she would absent from an upcoming shift due to a swollen eye. Ms. Richard had been the victim of a domestic assault on August 31, 2013.

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 in the record establishes a pattern of failing to complete required training by the due date or by the 30-grace period that followed the due date. The evidence indicates that Ms. Richard was aware from the start of the employment that there would be computer-based training that she would be expected to complete each month. The employer paid Ms. Richard for her time as she worked on the training. Contrary to Ms. Richard's assertion, her work hours did not prevent her from completing the training. Contrary to Ms. Richard's assertion, for all but three weeks of the employment, she was scheduled to work substantially less than full-time hours. Contrary to Ms. Richard's assertion, she had time, opportunity, and access to a computer in the workplace so that she could complete the training in a timely manner. Neither Ms. Richard's flooded home nor the assault on August 31, 2013 was the cause of Ms. Richard not completing the required training in a timely manner. Ms. Richard's continued failure to complete the required training concerning the HIPAA law and other matters negatively impacted the employment and demonstrated a willful disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Richard was discharged for misconduct. Accordingly, Ms. Richard 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.

DECISION:

The Agency representative's November 19, 2013, reference 03, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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