

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIJEL BANJANIN**  
Claimant

**APPEAL NO. 17A-UI-02789-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAINSTREAM LIVING INC**  
Employer

**OC: 02/12/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Danijel Banjanin filed a timely appeal from the March 3, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Banjanin was discharged on February 10, 2017 for misconduct in connection with the employment. After due notice was issued, a hearing was held on April 5, 2017. Mr. Banjanin participated. Marcanne Lynch represented the employer and presented additional testimony through Gracie Danilson and Margaret Petosa. Exhibits 1, 2, 3, 5 through 8, 10, 13, 15, 18, 19, 21-24, 26, 28, 30, 33, 34 and A 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: Danijel Banjanin was employed by Mainstream Living, Inc., as a full-time Direct Support Professional from April 2016 until February 10, 2017, when Marcanne Lynch, Human Resources Manager, discharged from the employment. Mr. Banjanin's duties involved assisting three disabled adult member clients with activities of daily living. Those three people resided in a home in the Des Moines Metropolitan area. Mr. Banjanin's duties also included providing timely and accurate documentation of the services he provided to those clients for Medicaid billing purposes. Mr. Banjanin received appropriate training at the start of the employment. In November 2016, Mr. Banjanin requested and underwent additional training in documenting the services he had provided to clients. Mr. Banjanin's immediate supervisor was Margaret Petosa, Team Leader.

The final incident that triggered the discharge occurred on February 2, 2017. At 2:00 p.m. that day, Mr. Banjanin reported for work at the home where the three member clients resided. Direct Support Professional Gracie Danilson was working at the home and nearing the end of her shift when Mr. Banjanin arrived. When Mr. Banjanin arrived he stated to member R that he wanted to have a drink. R is intellectually disabled dependent adult. R's legal guardian approved of R

having an occasional beer. When Mr. Banjanin mentioned that he wanted to have a drink, Ms. Danilson told Mr. Banjanin that R had already had a beer during a lunch outing, that the beer at lunch had been approved by the R's guardian days in advance, and that Mr. Banjanin would need to call R's guardian to get approval for a second beer on the same day. Mr. Banjanin did not contact R's guardian to see whether the guardian would approve of R having a second beer that day.

After Ms. Danilson left on February 2, Mr. Banjanin took R to Cattor's, a West Des Moines bar, where he and R each drank a beer. Mr. Banjanin did not clear the beer consumption with R's guardian. The employer's work rules prohibited Mr. Banjanin from consuming alcohol on the clock, regardless of where he was providing services on behalf of the employer. Mr. Banjanin had been disciplined earlier in the employment for consuming alcohol on the clock and was well aware of the written work rule. After the bar, Mr. Banjanin took R to a Subway restaurant for dinner. Mr. Banjanin and R then returned to R's home. Before the end of his shift, Mr. Banjanin documented the services he had provided to R and one or more other member clients during the shift. Mr. Banjanin documented the trip with R to Subway, but intentionally omitted the trip to the bar. Mr. Banjanin documented for reimbursement purposes the miles he had put on his personal vehicle during the shift. The number of miles exceeded the roundtrip distance to Subway. Mr. Banjanin documented that he had withheld R's evening medications, but documented that action was based on the beer that R had at lunch.

On February 3, Ms. Danilson was doing laundry at R's home when she found in R's trouser pocket a Cattor bar token. Ms. Danilson asked R whether he and Mr. Banjanin had had a drink at the bar. At that time R denied having a beer.

On February 6, Ms. Danilson was again working in the home and asked R whether he and Mr. Banjanin had gone to the bar on February 2. At that time, R told Ms. Danilson that he and Mr. Banjanin went to the bar and that each drank a beer. Ms. Danilson then reported the matter to Ms. Petosa.

On February 7, Ms. Petosa met with R and questioned him regarding the evening in question. R told Ms. Petosa that when Mr. Banjanin arrived for his shift, Mr. Banjanin wanted R to go to the bar. R told Ms. Petosa that they had gone to the bar and that he and Mr. Banjanin had each drunk a beer.

On February 9, Ms. Petosa again spoke with R and R provided the name of the bar. On that day, Ms. Petosa notified Mr. Banjanin to not report for work that day, but to appear for a meeting the following the day.

On February 10, Ms. Lynch and Ms. Petosa met with Mr. Banjanin and questioned him about taking R to the bar on the evening of February 2. Mr. Banjanin told the employer the address for the bar and that R had consumed a Bud Light. Mr. Banjanin told the employer that he had been aware that R had consumed a beer at lunch the same day. Mr. Banjanin asserted that it had been unclear whether R could have 2 beers the same day. Mr. Banjanin acknowledged that he was not allowed to consume alcohol on the clock and denied that he had done so. The employer discharged Mr. Banjanin at that time. In making the decision to discharge Mr. Banjanin from the employment, the employer considered the prior violation of the alcohol consumption policy, the failure to consult with the guardian to get approval of the second drink on February 2, the intentionally misleading and incomplete documentation on February 2, and many prior reprimands for untimely submission of documentation of services provided. Prior to the February 2 documentation, the next most recent documentation issues had been about a month earlier, at which time the employer had placed Mr. Banjanin on probation.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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). 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 that Mr. Banjanin intentionally and substantially disregarded the employer's interests through his conduct on February 2 and his subsequent dishonesty during the February 10 meeting. Mr. Banjanin knowingly and intentionally violated multiple policies during his shift on February 2. Mr. Banjanin desired to have a beer on the clock and enlisted R's participation in that venture to facilitate Mr. Banjanin's trip to the bar. Mr. Banjanin intentionally disregarded the information he received from Ms. Danilson that he should consult with R's guardian before taking him for a second beer on February 2. Mr. Banjanin intentionally failed to consult R's legal guardian and thereby violated his duty to R, the guardian, and the employer. Mr. Banjanin did indeed consume alcohol on the clock on February 2 in violation of the employers' work rules. R's initial statement on February 3 was coached by Mr. Banjanin in an attempt to further enlist R in his misconduct and to mislead the employer. Mr. Banjanin drafted intentionally misleading documentation of his actions on February 2 in an attempt to hide his misconduct and mislead the employer. These actions are sufficient to establish disqualifying misconduct. The prior alcohol violation makes the second violation more egregious.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Banjanin was discharged for misconduct. Accordingly, Mr. Banjanin is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Banjanin must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The March 3, 2017, reference 01, decision is affirmed. The claimant was discharged on February 10, 2017 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs