

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RHONDA S SARGENT**  
Claimant

**APPEAL NO. 14A-UI-09043-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS DEVELOPMENT**  
Employer

**OC: 08/03/14**  
**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 August 19, 2014, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on September 18, 2014. Claimant Rhonda Sargent participated. Crystal Castillo represented the employer. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibits B through H 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: The employer is a social services agency that provides assistance to mentally disabled persons to support them in living as independently as possible. Rhonda Sargent was employed by Genesis Development as a full-time certified medication aide from 2012 until August 1, 2014, when the employer discharged her from the employment for alleged mistreatment of a client. Ms. Sargent worked at a residential care facility to Toledo and was assigned to the overnight shift, 10:00 p.m. to 6:00 a.m. Crystal Castillo, Residential Manager, was Ms. Sargent's immediate supervisor. Ms. Sargent's duties included making rounds to clients' rooms to ensure the safety of clients, passing medication to the clients, and cleaning.

On or about July 28, 2014, Ashley Fisher, a medication manager, alleged to Ms. Castillo that Ms. Sargent had acted inappropriately in dealing with a particular client, AW, during the previous night's overnight shift. AW was known to be easily agitated and prone to violence. AW suffers from bipolar disorder and intellectual disability. Ms. Fisher alleged that Ms. Sargent had told AW during the overnight shift that AW needed to stay in her room, stay in bed, and be quiet. On the same day that Ms. Castillo received the complaint from Ms. Fisher, another medication manager, Stephanie Behaunek, reported that AW had at one point during the shift entered the treatment room and that Ms. Sargent had responded by repeatedly stating that AW

could not be in the room and had to get out. AW became further agitated. Also on July 28, a client, SC, reported to Ms. Castillo that she had heard Ms. Sargeant loudly telling AW to stay in her room. The employer had provided Ms. Sargeant with training on how to de-escalate situations in which clients were agitated. The reports that Ms. Castillo received concerning Ms. Sargent's interaction with AW suggested not only that Ms. Castillo did not use her training to de-escalate the situation with AW, but had actually made the situation worse. Without questioning Ms. Sargent about the matter, Ms. Castillo and Emily Herron, Human Resources Manager, and Brenda Larking, Administrative Site Director, decided that Ms. Sargent would be discharged from the employment. On August 1, 2014, Ms. Castillo met with Ms. Sargent for the purpose of discharging her from the employment. Ms. Sargent denied the allegations made against her and wrote on the back of the discharge summary document that she had never been abusive to AW and had always followed what Ms. Castillo had directed her to do.

In making the decision to discharge Ms. Sargent from the employment, the employer considered an allegation that Ms. Sargent had acted inappropriately on July 24, 2014, during a special training session aimed at addressing AW's challenging behavior. Two staff members had alleged that Ms. Sargent and a coworker were rolling their eyes, laughing and talking under their breath in a manner that indicated dismissal of the training. The training had taken place at 9:00 a.m., a few hours after Ms. Sargent had completed her overnight shift and before Ms. Sargent had had an opportunity to sleep following her shift.

#### **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 employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to establish misconduct in connection with the employment. The employer did not present testimony from anyone with personal knowledge of the alleged incidents that factored in the discharge. The employer had the ability to present such testimony from at least a few people with personal knowledge, but the employer elected not to do that. The employer presented insufficient evidence to rebut Ms. Sargent's testimony that she did nothing inappropriate in connection with either set of allegations.

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

**DECISION:**

The claims deputy's August 19, 2014, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs