

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOLENE A JOHNSON
Claimant

APPEAL NO. 22A-UI-01568-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STONEHILL FRANCISCAN SERVICES INC
Employer

**OC: 11/28/21
Claimant: Appellant (2R)**

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

STATEMENT OF THE CASE:

The claimant, Jolene Johnson, filed a timely appeal from the December 16, 2021, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on December 1, 2021 for excessive unexcused absences. After due notice was issued, a hearing was held on February 9, 2022. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibit A was 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: The claimant, Jolene Johnson, L.P.N., was employed by Stonehill Franciscan Services, Inc. as a full-time Charge Nurse from 2018 until November 29, 2021, when the employer discharged her from the employment. The claimant performed her work in a long-term care facility. The claimant would usually had about two dozen residents in her care and would be assisted by two Certified Nursing Assistants. The claimant would be the only charge nurse on duty in her unit. Other charge nurses would be responsible for other units in the facility. Most of the residents in the claimant's care required assistance with ambulation. The claimant's duties included receiving and giving shift-change report, counting narcotics at shift change, taking resident vitals, dispensing medications and associated documentation. The claimant would assist the CNAs with resident ambulation as needed. The claimant usually worked three 6:00 a.m. to 6:00 p.m. shifts per week plus another four-hour or eight-hour shift per week. The claimant would usually get a 15-minute break mid-morning and a 30-minute break in the afternoon. Geri Morgan, R.N., Nurse Manager, was the claimant's immediate supervisor. Matt Jahn was the Director of Nursing and Karla Wallbillig was Vice President of Human Resources.

In October 2021, the claimant suffered injury to her ankle at home when she rolled her ankle. The claimant's doctor, an orthopedist, initially restricted the claimant to non-weight bearing status, which necessitated the claimant being completely off work. On November 24, 2021, the claimant's doctor released the claimant to return to work on Monday, November 29, 2021, but restricted the claimant to wearing a lace-up ankle brace or a Controlled Ankle Motion (CAM) boot. The claimant elected to use the lace-up ankle brace. At the time the claimant was released to return to work, she had also been referred to an orthopedic surgeon for a surgical consult.

The claimant returned to work on November 29, 2021. The claimant was in need of an income and desired to return and continue in the employment. The claimant performed her duties, but did so with ankle pain. At 9:00 a.m., the claimant spoke by telephone with her doctor. The doctor indicated the claimant could work, but would need to rest her ankle for brief periods as needed. After the claimant spoke with her doctor, she sent an email message to Mr. Jahn and Ms. Wallbillig, regarding the restrictions mentioned by her doctor. The claimant's doctor sent written restrictions to the employer. The claimant continued to perform her duties until around 3:30 p.m. to 4:00 p.m., when the claimant participated in a telephone conference meeting with Mr. Jahn and Ms. Wallbillig. At that the employer told the claimant she could no longer be employed due to her medical restrictions. The employer invited the claimant to re-apply once she had not medical restrictions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 Iowa Administrative Code rule 871-24.32(4).

In *Wills v. Employment Appeal Board*, the Supreme Court of Iowa held that an employee did not voluntarily separate from employment where the employee, a CAN, presented a limited medical release that restricted the employee from performing significant lifting, and the employer, as a matter of policy, precluded the employee from working so long as the medical restriction continued in place. See *Wills v. Employment Appeal Board*, 447 N.W.2d 137 (Iowa 1989). In *Wills*, the Court concluded that the employer's actions were tantamount to a discharge.

An employer has an obligation to provide an employee with reasonable accommodations that enable the employee to continue in the employment. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993).

The evidence in the record establishes a discharge for no disqualifying reason. The evidence indicates no basis for characterizing the separation as a discharge for attendance. Rather, the evidence establishes the employer discharged the claimant from the employment in lieu of reasonably accommodating the claimant's medical restrictions, namely a need to briefly rest her leg when her ankle caused her pain. The employer presented no evidence to establish the claimant was unable to perform essential duties with reasonable accommodations or that the accommodations requested by the claimant were unreasonable. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

This matter will be remanded to the Benefits Bureau for determination of whether the claimant has been able to work and available for work within the meaning of the law since she established her claim for unemployment insurance benefits.

DECISION:

The December 16, 2021, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

REMAND:

This matter is **remanded** to the Benefits Bureau for determination of whether the claimant has been able to work and available for work within the meaning of the law since she established her claim for unemployment insurance benefits.



James E. Timberland
Administrative Law Judge

February 28, 2022
Decision Dated and Mailed

jet/kmj