

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEAN M COLE
Claimant

APPEAL NO. 21A-UI-07818-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY REGIONAL MEDICAL CENTER
Employer

OC: 12/27/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant, Jean Cole, filed a timely appeal from the March 16, 2020, 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 voluntarily quit on December 23, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 26, 2021. Claimant participated. Tina Leonard, Human Resources Assistant, represented the employer.

ISSUES:

Whether the claimant voluntarily quit without good cause attributable to the employer.
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 was employed by Trinity Regional Medical Center as a full-time Central Sterilizing Technician from 2018 until December 23, 2020, when the employer discharged her from the employment for alleged carelessness and/or negligence in the performance of her work duties. The employer alleges a final incident on December 14, 2020 as the basis for the discharge. The employer alleges that the claimant on that day mixed contaminated surgical instruments with decontaminated surgical instruments. The claimant denies knowledge of any such incident or that any such incident was discussed with the claimant. At the time the department managers discharged the claimant from her position in Central Sterilizing department, they did not address the alleged December 14, 2020 incident. Rather, they told the claimant she was a valued employee, could no longer work in the "CS" department, but invited the claimant to apply for positions in other hospital departments. Immediately thereafter, the claimant applied for, interviewed for, and was rejected for a food service position and an environmental services position. No further employment was provided.

The claimant worked as part of a small team of Central Sterilizing Technicians who were responsible for following an established protocol for cleaning and sterilizing surgical instruments

post-surgery and before the instruments were used in subsequent surgical procedures. The claimant had received appropriate training and was able to perform the duties in a satisfactory manner.

The employer alleges a warning was issued to the claimant on October 19, 2020. However, the warning the employer has in its possession is unsigned. The claimant denies that any such warning was issued to her or discussed with her. The warnings includes cursory information regarding three alleged incidents. The warning alleges that on October 6, 2020, the claimant failed to remove visible bio-matter from one or more instruments prior to sending them to the autoclave for sterilization. The claimant denies knowledge of the incident or concern. The warning alleges that on October 12, 2020, medical or nursing staff were unable to contact the claimant through her wireless headset to request that instruments be brought to the surgical suite and that a nurse had to collect the needed instruments. The claimant denies knowledge of such failure to respond and adds that her wireless headset could not receive a signal when she was working in the "Endo" department. The claimant does not recall whether she was working in Endo on the date in question. The warning alleges that on October 13, 2020, the claimant left dirty instruments to sit overnight. The claimant denies knowledge of the particular incident, but advises it was not against protocol to leave dirty instruments for the next day, if the instruments were received late in the day.

On May 24, 2019, the employer issued a warning to the claimant. The claimant signed the warning. The warning asserts, without detail, errors and omissions in the daily sterilization process, including surgical instruments missing from a surgical tray the claimant assembled and two occasions wherein suction tools were plugged. The warning provides an April 19, 2019 to May 14, 2019 time-span for the concerns.

REASONING AND CONCLUSIONS OF LAW:

The parties are in agreement that the claimant was discharged from the employment and did not voluntarily quit. The evidence indicates a discharge, rather than a voluntary separation from the employment.

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).

The evidence in the record establishes a discharge for no disqualifying reason. The employer presented insufficient evidence to prove a current act of misconduct. The employer elected not to present testimony from persons with personal knowledge of the matters in question. The employer presented insufficient evidence to rebut the claimant's testimony concerning the matters that factored in the discharge. The employer presented insufficient evidence to prove that the claimant was responsible for the December 14, 2020 final incident that triggered the discharge. The employer presented insufficient evidence to prove willful and wanton disregard of the employer's interests, or a pattern of carelessness and/or negligence indicating such disregard. The employer's invitation to the claimant to apply for other positions further supports the conclusion that this was a non-disqualifying involuntary separation, rather than a discharge based on misconduct in connection with the employment. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The March 16, 2020, reference 01, decision is reversed. The claimant was discharged on December 23, 2020 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.



James E. Timberland
Administrative Law Judge

June 07, 2021
Decision Dated and Mailed

jet/ol