

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HELEN A GARRELS
Claimant

SIoux CITY COMMUNITY SCHOOL DIST
Employer

APPEAL NO. 19A-UI-07903-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/15/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Helen Garrels filed a timely appeal from the October 3, 2019, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Garrels was discharged on August 27, 2019 for failure to perform satisfactory work despite being capable of performing satisfactory work. After due notice was issued, a hearing was held on October 29, 2019. Ms. Garrels did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Stefanie Verros represented the employer and presented additional testimony through Anita Trelqia-Foster and Debbie Logsdon.

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: Helen Garrels was employed by Sioux City Community School District as a part-time food service worker from 2013 until August 27, 2019 when the employer discharged her due to her inability to retain information and follow instructions regarding her work duties. Ms. Garrels could be assigned to work at any one of several schools and her assigned location could change from day to day. During the last few years of Ms. Garrels' employment, the employer noticed a progressive decline in Ms. Garrels' cognitive ability. Ms. Garrels is in her 70s and the cognitive decline was likely age-related. Toward the end of the employment, Ms. Garrels would sometimes attempt to report to a workplace in the evening. Ms. Garrels work hours did not include evening work hours. Toward the end of the employment, the employer spoke with one of Ms. Garrels' daughters, who confirmed the family was concerned with Ms. Garrels' cognitive decline and had urged her to seek medical evaluation. At the start of the most recent term, the kitchen manager where Ms. Garrels was assigned to work noted that Ms. Garrels appeared confused and needed help with simple tasks like clocking in. One or more kitchen managers requested that Ms. Garrels not be sent to assist with their kitchen operations. In light of such

requests and the ongoing concern about Ms. Garrels' declining cognitive abilities, the employer elected to terminate Ms. Garrels employment.

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 871 IAC 24.32(4).

The evidence in the record establishes a discharge for disqualifying reason. The discharge was not based on any intentional conduct on the part of Ms. Garrels. Ms. Garrels did not act with disregard of the employer's interests. Rather, the discharge was based on Ms. Garrels' progressive inability to perform to the employer's satisfaction. The inability was based on Ms. Garrels' progressive cognitive decline. Ms. Garrels is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The October 3, 2019, reference 02, decision is reversed. The claimant was discharged on August 27, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn