

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY PAMPERIN
Claimant

APPEAL NO. 15A-UI-01242-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 12/21/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Kelly Pamperin filed a timely appeal from the January 21, 2015, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on February 23, 2015. Claimant participated. Todd Allbee represented the employer and presented additional testimony through Amy Clabaugh and Wayne Boyd. Exhibits A through J 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: Kelly Pamperin was employed by ABCM Corporation as a full-time, salaried care liaison from 2012 until December 24, 2014 when the employer discharged her from the employment for failure to maintain appropriate contact with the employer and for neglect of her duties. Amy Clabaugh, Lead Care Liaison, was Ms. Pamperin's immediate supervisor. The employer operates 30 skilled care facilities. The employer relies on hospitals for client referrals and has established mutually beneficial relationships with hospitals. The employer consults with patients who are ready to be discharged from the hospital to a skilled nursing facility. Time is of the essence when it comes to such consultations, as lack of a timely response from ABCM could well lead to a patient being referred to or placed in a competitor's skilled care facility with corresponding loss in potential revenue to ABCM.

Ms. Pamperin's care liaison duties involved consulting with patients being discharged from hospitals, and patients' families regarding placement in one of the employer's skilled care facilities. Ms. Pamperin was responsible for relationships with five hospitals. Ms. Pamperin's usual working hours were 8:00 a.m. to 5:00 p.m., Monday through Friday. The employer provided Ms. Pamperin some flexibility in her hours but expected Ms. Pamperin to respond in a timely manner to calls and requests for consultation. Ms. Pamperin had on-call duties pursuant to the employer's rotating assignment of those duties.

Until the last few months of the employment, Ms. Pamperin had been a top performing care liaison. Ms. Pamperin had demonstrated proficiency and had good relationships with the hospitals she served. During the last few months of the employment, Ms. Pamperin's relationship with a drug-addicted, abusive boyfriend interfered with Ms. Pamperin's work performance.

The final incident that triggered the discharge occurred on December 24, 2014 when multiple health care facilities contacted the employer to complain that the facilities could not reach the claimant. Ms. Pamperin was on-call at the time. The employer also tried unsuccessfully that morning to reach Ms. Pamperin. Ms. Pamperin had overslept and had allowed her work phone battery to go dead, in part, through extended personal use of the work cell phone into the early hours of the morning. The employer had also sent one or more emails to Ms. Pamperin's work computer in an attempt to provoke a response. The employer was concerned for Ms. Pamperin's wellbeing and contacted Ms. Pamperin's father, a law enforcement officer, to have him do a welfare check on Ms. Pamperin. Only after Ms. Pamperin's father came to her house and told her to contact the employer did Ms. Pamperin make contact with the employer. A short while later, the employer notified Ms. Pamperin that she was discharged from the employment.

The final incident was part of a pattern of conduct that included a prior incident of Ms. Pamperin oversleeping and multiple complaints to the employer from referring facilities about being unable to reach Ms. Pamperin for assistance with placing patients. The final incident also followed multiple instances wherein the employer could not reach Ms. Pamperin by telephone and/or Ms. Pamperin did not follow up on promises to contact the employer. In connection with one prior incident, Ms. Pamperin had intentionally misled a referring facility about when she would report to the facility to meet with a patient's family. The family waited for hours and the patient ending up having to stay another day in the hospital due to Ms. Pamperin's delay. Prior to discharging Ms. Pamperin from the employment, the employer had counseled Ms. Pamperin about the need to maintain better contact with the employer, referring facilities and patients in need of placement services.

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 evidence in the record establishes a pattern of conduct that demonstrated a willful and wanton disregard of the employer's interests. The weight of the evidence indicates that Ms. Pamperin had demonstrated proficiency in her duties, but neglected those duties on a regular basis during the last months of the employment. The evidence goes beyond that and indicates that Ms. Pamperin on at least one occasion was intentionally dishonest with the staff at a referring facility and that Ms. Pamperin on multiple occasions intentionally avoided contact with the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Pamperin was discharged for misconduct. Accordingly, Ms. Pamperin is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The January 21, 2015, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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