

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ASHA WOLLOR**  
Claimant

**BALANCE AUTISM**  
Employer

**APPEAL 20A-UI-04900-J1**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC 04/05/20**  
**Claimant: APPELLANT (2)**

Iowa Code § 96.5(2)a – Misconduct

**STATEMENT OF THE CASE:**

On May 27, 2020, the claimant filed an appeal from the May 22, 2020, (reference 01) unemployment insurance decision that denied benefits based on claimant quitting without good cause attributable to the employer. The parties were notified about the hearing. A telephone hearing was held on July 8, 2020. Claimant participated. Employer participated through Sonia Sledge, Human Resources Generalist and Bryan Hart, Program Manager.

**ISSUE:**

Did claimant commit job related misconduct??

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 24, 2019. Claimant last worked full-time as an Adult Autism Associate. Claimant was separated from employment on March 30, 2020 when she was discharged for allowing a visitor into one of the homes operated by the employer.

The employer created a policy in response to the Covid-19 pandemic for protection of staff and residents/clients. The policy issued on March 15, 2020 held that only staff and residents/clients were allowed into the home operated by the employer. Claimant received a copy of the policy and acknowledged receipt on March 16, 2020.

On March 17, 2020 claimant was assigned to work in a new home that she had not worked in before. Claimant was being trained by another staff member. While at a client's resident on March 17, 2020, Ms. Jesse Spiyee, a former employee of Balance Autism, was at the premises.

Claimant credibly testified that she told the other staff member that having a visitor over was not allowed and claimant was informed by the staff member who was training her that she was in charge and would handle the matter. At that time Mr. Hart came to the home to do an audit of the home and Mr. Hart found Ms. Spiyee, who was a former employee, sitting on the couch talking to claimant.

Claimant had received a written warning in February 2020 that concerned not following client's treatment plans. Claimant was warned in February that additional violations of policy could lead to her termination. The employer terminated claimant on March 30, 2020 for violation of company policy concerning visitors in homes. The employer did not terminate the other employee as who was at the home, as she did not have a prior warning.

## **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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984)

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).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The employer has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy. In this case the lead worker who was training claimant told her that she would take care of the problem of the visitor. The visitor was there to see the lead worker. The actions of the claimant were wrong under company policy and the employer can for that reason or any other non-discriminatory reason discharge the claimant. The conduct of the claimant was more akin to inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion. Claimant's actions were not a deliberate violation of company policy. She did not invite the visitor and was being trained. The visitor came to see the other staff person. The claimant did not commit job related misconduct.

**DECISION:**

The May 22, 2020, reference 01, is reversed. The claimant is eligible for unemployment benefits, provided she is otherwise eligible.



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James F. Elliott  
Administrative Law Judge

July 15, 2020  
Decision Dated and Mailed

je/scn