

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HILDA C BAKER**  
Claimant

**APPEAL NO. 09A-UI-02375-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BOYS & GIRLS RESIDENTIAL  
TREATMENT CENTER INC**  
Employer

**Original Claim: 01/11/09  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Hilda Baker filed a timely appeal from the February 6, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 9, 2009. Ms. Baker participated. Mark Nielsen, Human Resources Specialist, represented the employer. Exhibits A through C and E through G were received into evidence. There was no Exhibit D.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer contracts with the Iowa Department of Human Services (D.H.S.) to provide in-home services to families. Hilda Baker was employed by the Boys & Girls Residential Treatment Center in Sioux City as a full-time care coordinator from September 21, 2007 until January 13, 2009, when Mark Nielsen, Human Resources Supervisor; Rhonda Lacy, Program Director; and Christina Reynolds, Care Coordinator Supervisor, discharged her for failing to complete mandatory client contact documentation in a timely manner. Ms. Reynolds was Ms. Baker's immediate supervisor at the end of the employment. James Holmes, Care Coordinator Supervisor, was previously Ms. Baker's immediate supervisor.

The employer bills D.H.S. monthly for the in-home services it has provided. The employer must document the services it has provided in order to bill for those services. Ms. Baker's duties as a care coordinator included documenting the services she provided to families. The employer's work rules indicate that service notes are to be turned in within 48 hours of providing the in-home service. Ms. Baker and others struggled with meeting this deadline and struggled even when given more time to complete the documentation. Because of ongoing issues with Ms. Baker's late submission of the documentation, the employer had Ms. Baker submit her documentation weekly. The employer deemed a normal caseload to be 15 or fewer families. Ms. Baker is bilingual, was assigned the Spanish speaking families, and had 18 families assigned to her as of July 2008.

Ms. Baker's documentation for services she provided in December 2008 was due on January 1, 2009. As of January 12, 2009, Ms. Baker had still not gotten all of her December documentation to her supervisor or the appropriate support staff employee. On January 7, Ms. Lacy had sent an e-mail message to Ms. Baker and others warning them that their paperwork needed to be submitted not later than Friday, January 9.

On April 2, 2008, Ms. Holmes issued a performance warning to Ms. Baker in connection with Ms. Baker's later submission of service documentation. On May 6, Ms. Holmes issued another warning to Ms. Baker when Ms. Baker turned in 30 or more service notes late. On July 24, 2008, Ms. Holmes issued a reprimand to Ms. Baker for failing to meet the 48-hour deadline for submitting service notes. On December 18, Ms. Reynolds issued a warning to Ms. Baker for late submission of her service notes.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

871 IAC 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.

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 weight of the evidence indicates that Ms. Baker struggled for at least several months to stay on top of her assigned duties. The weight of the evidence indicates that part of the reason Ms. Baker struggled was that SHE had more cases than what the employer deemed a “normal” work load. The weight of the evidence indicates that Ms. Baker was not the only care coordinator who struggled to meet the employer’s deadline for submission of service notes. The evidence fails to demonstrate that Ms. Baker’s failure to meet the deadlines was a result of willful or wanton disregard of the interests of the employer, or part of a pattern of negligence indicating such a willful or wanton disregard of the interests of the employer. The weight of the evidence indicates that Ms. Baker performed her duties to the best of her abilities but was unable to consistently meet the employer’s deadlines for submission of service documentation. The weight of the evidence indicates that the employer contributed to the problem through its allocation of duties to Ms. Baker. Inability to perform to the employer’s expectations does not constitute misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Baker was discharged for no disqualifying reason. Accordingly, Ms. Baker is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits paid to Ms. Baker.

**DECISION:**

The Agency representative’s February 6, 2009, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw