

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAKE L BERGSTROM
Claimant

APPEAL NO. 08A-UI-07924-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

**OC: 08/03/08 R: 02
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Broadlawns Medical Center filed a timely appeal from the August 28, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 17, 2008. Claimant Jake Bergstrom participated. Rick Barrett, Legal Resources Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which records indicate that no benefits have been disbursed to the claimant in connection with the claim established on August 3, 2008.

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: Jake Bergstrom was employed by Broadlawns Medical Center as a full-time transporter from March 18, 2008 until July 31, 2008, when Betty Jones, Director of Nursing for Med Surg Peds Area, and Julie Kilgore, Director of Human Resources, discharged him. Ms. Jones was Mr. Bergstrom's immediate supervisor.

The final events that prompted the discharge occurred on July 28 and 29. On July 28, Mr. Bergstrom left the Med Surg Peds area and went to another area of the hospital, where he told a nurse at the nurses' station that he had left his work area because it was chaotic. Mr. Bergstrom told the nurse that Emergency Room staff had just brought a female patient to the Med Surg Peds floor and that the patient was alleging she had been sexually assaulted by staff. Mr. Bergstrom told the nurse that three different hospital directors were on the Med Surg Peds floor. Mr. Bergstrom did not identify the patient at issue. Mr. Bergstrom told the nurse that it was the situation surrounding the patient's allegation and the hospital's response that was making the Med Surg Peds floor chaotic and that had prompted him to leave the area. The employer deemed the discussion initiated by Mr. Bergstrom an inappropriate disclosure of information. As part of the same or a separate incident, someone alleged that Mr. Bergstrom

also used profanity on July 28 when speaking in the vicinity of a nurses' station. At some point on July 29, Mr. Bergstrom could not be reached to respond to a request that he transport a patient. At the time, Mr. Bergstrom was in a basement area of the hospital, where his work-issued cell phone could not receive a signal.

In making the decision to discharge Mr. Bergstrom, Ms. Jones considered a written reprimand she had issued to Mr. Bergstrom on July 22, 2008. The reprimand was based on an allegation that Mr. Bergstrom had been loitering and/or engaging in horseplay on June 26 and 27.

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 administrative law judge notes that none of the people with firsthand information about the events that triggered the discharge testified at the appeal hearing.

The employer has presented insufficient evidence to establish that Mr. Bergstrom was discharged for misconduct in connection with the employment that would disqualify him for unemployment insurance benefits. The evidence indicates that on June 28 Mr. Bergstrom used poor judgment when explaining to a nurse why he felt the need to leave his assigned work area. However, the employer has not presented sufficient evidence to establish that Mr. Bergstrom knowingly, negligently or carelessly violated hospital policy and/or any applicable regulation in speaking with the nurse. The employer has presented no evidence to substantiate the allegation that Mr. Bergstrom used profanity in the workplace on June 28. The employer has presented no evidence to substantiate the allegation that Mr. Bergstrom knowingly, negligently or carelessly missed or avoided a call for service on June 29.

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

DECISION:

The Agency representative’s August 28, 2008, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs