

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY J KLATT
Claimant

APPEAL NO. 16A-UI-12649-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LORING HOSPITAL
Employer

OC: 10/30/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Wendy Klatt filed a timely appeal from the November 22, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on a claims deputy's conclusion that Ms. Klatt had been discharged on October 28, 2016 for failure to follow instructions in the performance of her work. After due notice was issued, a hearing was held on December 14, 2016. Ms. Klatt participated and presented additional testimony through Dr. Bernadette Gyano and Deb Johnson. Becky Pontius represented the employer and presented additional testimony through Brian Martin, Amanda Hedberg, Crystal Remmick, Sara Bell and Marie Ulrich. Exhibits 1 through 5, 7, 9, 11, 13, 14, 18, 19, 20, 22 and A through E 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: Wendy Klatt was employed by Loring Hospital as a full-time medical lab technician from 1994 until October 28, 2016, when Brian Martin, Chief Executive Officer, discharged her from the employment. Ms. Klatt's usual work hours were 7:00 a.m. to 5:00 p.m. Ms. Klatt was also assigned on-call shifts.

The incident that triggered the discharge occurred on the evening of October 26, 2016. Ms. Klatt was on call and was summoned to assist with patients in the emergency room. When Ms. Klatt arrived, she discovered the door to the refrigerator in which blood was stored was ajar. Amanda Hedberg, R.N., has left the door ajar when she retrieved a unit of blood. Ward Clerk Marie Ulrich had silenced the alarm that sounded to alert staff that the blood bank refrigerator door was ajar. However, no one had addressed the alarm or the open door prior to Ms. Klatt's arrival. The hospital's only supply of blood was located in the blood bank refrigerator. To get additional blood, the hospital would have to contact Life Serve Blood Center in Des Moines and Life Serve would have to transport additional units of blood to Sac City. As soon as Ms. Klatt

discovered the blood bank refrigerator door was ajar, she took the necessary steps to ensure the blood was safe, usable and stored at the proper temperature. During this process, Ms. Klatt was in contact with Ms. Ulrich, with the nursing staff, with Deb Johnson, who was an inventory coordinator at Life Serve, with Lab Manager Crystal Remmick, and with Dr. Bernadette Gyano. During her contact with Dr. Gyano, Ms. Remmick, and Ms. Johnson, Ms. Klatt conducted herself in a competent and professional manner. At the time of Ms. Klatt's initial contact with Ms. Ulrich, Ms. Klatt was in the initially stages of dealing with the crisis, was upset by the possibility that neither the in-house alarm, nor the off-site security agency had functioned to alert the staff to the open blood bank refrigerator door. During the initial contact with Ms. Ulrich and the nursing staff, Ms. Klatt's coworkers perceived Ms. Klatt to be unnecessary stern and intimidating. During subsequent contact with Ms. Klatt during the same evening, when the crisis was nearly resolved, those same coworkers perceived Ms. Klatt to be calm and reasonable. However, multiple staff elected to report Ms. Klatt's initial demeanor to supervisory personnel. Without disclosure to Ms. Klatt the topic to be discussed, Ms. Remmick contacted Ms. Klatt by email to indicate that she wished to speak with Ms. Klatt the following Monday. In the meantime, the employer solicited written statements from the staff members who had perceived Ms. Klatt's initial demeanor to be stern and intimidating. The employer did not solicit a written statement from Ms. Klatt and did not interview Ms. Klatt regarding the concern prior to discharging Ms. Klatt from the employment. The employer deemed Ms. Klatt's initial demeanor in the face of the crisis to be a violation of the employer's written standards of behavior.

In making the decision to discharge Ms. Klatt from the employment, the employer considered an incident from November 3, 2015, where in Ms. Klatt was less than tactful when she contacted Ms. Remmick and another lab supervisor while they were participating in a training session. At the time, Ms. Klatt was responding to a directive from a physician who needed to speak with one of the supervisors.

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) alone. 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).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984).

The evidence in the record fails to establish misconduct in connection with the employment that would disqualify Ms. Klatt for unemployment insurance benefits. The evidence in the record establishes that Ms. Klatt, momentarily and during a crisis, used a tone of voice that her coworkers found to be unnecessarily stern. Ms. Klatt did not yell. She did not use profanity. She did not direct derogatory comments at anyone. The weight of the evidence fails to support the assertion that her body language conveyed intimidation. No witness was able to provide specifics to support that allegation. Ms. Klatt's perceived sternness quickly passed as she went about competently and efficiently worked to correct a crisis caused by the carelessness of her coworkers. The weight of the evidence establishes that Ms. Klatt performed her duties in good faith and in a competent manner. Neither the momentary error in tone on October 26, nor the

similar lack of tact a year earlier, is sufficient to establish an intentional and substantial disregard of the employer's interests. The administrative law judge notes the employer's incomplete and one-sided nature of the employer's investigation of the final incident.

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

DECISION:

The November 22, 2016, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs