

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**ELTON BELLEH**  
Claimant

**COMPREHENSIVE SYSTEMS INC**  
Employer

**APPEAL NO. 23A-UI-00765-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/11/22  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On January 25, 2023, Ms. Elton Belleh (claimant) filed a timely appeal from the January 23, 2023 (reference 02) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on December 12, 2022 for conduct not in the best interests of the employer. After due notice was issued, a hearing was held on February 10, 2023. Claimant participated. Sheryl Heyenga represented the employer and presented additional testimony through Carolyn Repp. Exhibit 1 was received into evidence.

The claimant is from Liberia and immigrated to the United States in 2014. English is the official language of Liberia. The claimant speaks English with an accent that can be challenging to the listener, especially is the claimant forgets to slow down while speaking. The claimant also speaks Kissi. Prior to the hearing, the claimant requested a Kissi interpreter. At the time of the hearing, CTS Language link advised there was no Kissi interpreter available to assist with the hearing and no assurance that one would become available. The administrative law judge engaged the claimant in discussion regarding whether to attempt the hearing without an interpreter or to reschedule in the hope that a Kissi interpreter might become available. The administrative law judge concluded it was appropriate to attempt the hearing with appropriate adjustments and clarifications during the hearing. The administrative law judge ensured the claimant and the employer were each able to understand the information communicated during the hearing and each confirmed their ability to understand.

**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: Ms. Elton Belleh (claimant) was employed by Comprehensive Systems, Inc. as a full-time Direct Support Professional. The employer provides residential and day program services to individuals with intellectual disabilities. The claimant worked primarily in the day program, but picked up shifts

at the employer's residential facilities. In both the day program and residential work, the claimant assisted clients with activities of daily living. The residential duties included duties, such as bathing. The claimant performed some ancillary cleaning duties in the Direct Support position. The claimant began the employment in March 2022 and continued to perform her Direct Support duties until November 17, 2022.

On November 17, 2022, the employer indefinitely suspended the claimant from the employment after another day program staff member alleged the claimant had pushed a day program client. The claimant denies that she pushed the client and asserts that she merely briefly and non-aggressively held the client's hand to stop the client from poking her in the shoulder and that her interaction with the client remained friendly and pleasant throughout. The claimant further asserts a racial component to the allegation that she pushed the client, in that the complaining coworker is white and the claimant is a black immigrant. The coworker who lodged the complaint and the two supervisors who briefly investigated the matter prior to placing the claimant off work continue with the employer. The employer acknowledges a state regulation that required the employer to separate the claimant from the particular client until the allegation of abuse could be investigated by an outside agency. The employer concedes that placing the claimant completely off work went beyond what the state regulation required.

The employer has never recalled the claimant to her Direct Support Professional duties. After the placed the claimant off work, the claimant regularly contacted the employer for updates. On December 15, 2022, after the employer learned of the claimant unemployment insurance claim, the employer contacted the claimant and offered to have the claimant perform cleaning duties at the residential facilities when clients were not present. The claimant initially indicated she was ill. On December 22, 2022, the employer again spoke with the claimant about performing cleaning duties. At that time, the claimant advised she was without a working car and, therefore, could not drive between multiple houses as the cleaning duties would require.

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

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(1) Material falsification of the individual's employment application.

- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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 Iowa Legislature recently codified the definition of misconduct and included a list of conduct that constitutes disqualifying misconduct in connection the employment. See Iowa Code section 96.5(2)(d).

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 Iowa Administrative Code rule 871-24.32(4).

Iowa Administrative Code rule 871-24.32(9) provides as follows:

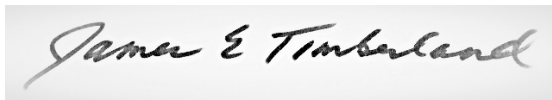
Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The evidence in the record establishes a November 17, 2022 discharge for no disqualifying reason. On November 17, 2022, the employer indefinitely suspended the claimant from her full-time Direct Support Professional position. The indefinite suspension and effective discharge was based on an allegation that the claimant pushed an adult disabled client on November 17, 2022. The employer present no witness testimony from persons with personal knowledge of the incident that triggered the suspension and effective discharge. The employer elected not to identify or present testimony from the coworker who alleged the claimant has pushed the client. The employer elected not to present testimony from the two managers who briefly investigated the matter before they suspended the claimant from the employment. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to rebut the claimant's testimony regarding her interaction with the client. The weight of the evidence in the record does not support the allegation that the claimant pushed, abused or behaved in anything other than a reasonable manner during her interaction with the client in question. The employer acknowledges a state regulation that required the employer to separate the claimant from the client in question while an outside agency investigated the allegation, but concedes the regulation did not require the employer to completely separate the claimant from the workplace. After the claimant had been off work for weeks, and after the employer learned of the unemployment insurance claim, the employer offered the claimant cleaning duties that

amounted to substantial changes in the conditions of the employment, both in terms of the particular duties and in terms of the increased transportation burden associated with traveling from house to house during the shift. The claimant was not obliged to acquiesce in the changed conditions. See Iowa Administrative Code rule 871-24.26(1) (regarding voluntary quits for good cause based on change in the contract of hire). The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The January 23, 2023 (reference 02) decision is REVERSED. The claimant was discharged for no disqualifying reason. The discharge was effective November 17, 2022, not December 12, 2022. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



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James E. Timberland  
Administrative Law Judge

February 14, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.