

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLENE ROQUET

Claimant

APPEAL NO. 09A-UI-14543-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE HEALTH FACILITIES XVII LP

Employer

Original Claim: 09/06/09

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Kathlene Roquet filed a timely appeal from the September 24, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 20, 2009. Ms. Roquet participated and presented additional testimony through Robin Crabtree. Julie Simons, Director of Nursing, represented the employer. Exhibits A through F were received into evidence. At the request of the employer, the administrative law judge took official notice of the Agency's administrative file documents submitted for or generated in connection with the September 23, 2009 fact-finding interview. The Appeals Section mailed a copy of the administrative file documents to both parties on October 8, 2009.

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: Kathlene Roquet was employed by Pinnacle Health Facilities for several years as a full-time certified nursing assistant. From 2005 onward, Ms. Roquet worked at Granger Nursing and Rehab. On September 4, 2009, Paulette Schmidt, Acting Administrator, and Julie Simons, Director of Nursing discharged Ms. Roquet because she had contacted the Iowa Department of Inspections and Appeals with concerns she had about the workplace in lieu of adhering to the employer's "chain of command."

On June 13, 2009, Ms. Roquet observed the facility administrator as he yelled at a resident at close range and threatened the resident with expulsion from the facility. Ms. Roquet reported the matter to the Iowa Department of Inspections and Appeals as an incident involving verbal abuse of a dependent adult. Ms. Roquet was a mandatory abuse reporter. The administrator subsequently separated from his administrative duties at Granger Nursing and Rehab.

On August 20, 2009, the employer posted a bulletin that said employees were no longer allowed to contact the State of Iowa with their concerns about the facility, but instead were required to contact the employer's corporate office.

On August 22, 2009, Ms. Roquet was not directly involved but was present when a resident went into a "full code" and required life-saving measures. At that time, the nurses working to revive the resident discovered that the "crash cart" that should have contained all necessary equipment in fact lacked necessary equipment because it had not been properly stocked. The crash cart lacked suction tubing and CPR masks. The facility had the one crash cart for 60 residents. The resident in question passed away that day. Ms. Roquet assumed the Register Nurse/Charge Nurse involved would report the matter further up the chain of command. Ms. Roquet believed she had a duty to report the matter to the Iowa Department of Inspections and Appeals and did so that day. On August 23, the employer replaced the crash cart. Ms. Roquet learned on August 24 that another employee had reported the matter to the Director of Nursing. On August 25, Ms. Roquet received a call from an Iowa Department of Inspections and Appeals employee, who told Ms. Roquet that she had used the wrong number when reporting the matter. That same day, Ms. Roquet again reported the crash cart incident to the Department of Inspections and Appeals and used the correct number.

On August 26, the Department of Inspections and Appeals went to the facility to investigate. Ms. Roquet was not scheduled to work that day. Two other employees called Ms. Roquet to ask if she had contacted the State authorities. While Ms. Roquet did not provide an answer on that day, when she returned to work on August 27, Ms. Roquet said to the two coworkers that she had in fact made a report to the State. Ms. Roquet did not discuss the matter outside the workplace or with non-staff. On September 1 and 2, the coworkers told the Director of Nursing that Ms. Roquet had admitted contacting the State authorities about the crash cart incident.

On September 4, the Acting Administrator and Director of Nursing summoned Ms. Roquet to a meeting and discharged her from the employment. Ms. Roquet had received no prior reprimands. The employer alleged that Ms. Roquet had intimidated and coerced fellow employees and had disclosed proprietary information without proper authorization and without reporting her concerns to a supervisor.

Ms. Roquet's discharge—and the reports Ms. Roquet made to the Iowa Department of Inspections and Appeals—occurred in the context of other complaints/reports other staff or non-staff had made to State authorities about Granger Nursing and Rehab. These reports had prompted the Iowa Department of Inspections and Appeals to conduct multiple investigations concerning the facility.

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).

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 administrative law judge will first address the chain of events that began with the crash cart incident on August 22, 2009. The weight of the evidence indicates that Ms. Roquet was not directly involved in the crash cart incident, that other staff was directly involved, and the staff directly involved included the Charge Nurse. Ms. Roquet reasonably concluded that the Charge Nurse or others directly involved in the matter would report the very serious matter up the chain of command. The evidence indicates that other staff did indeed promptly report the matter to the employer. The weight of the evidence indicates it was not Ms. Roquet's failure to report the matter to the employer that triggered her discharge. Instead, Ms. Roquet's report to the Iowa Department of Inspections and Appeals was what actually triggered the discharge. The employer's policy prohibiting Ms. Roquet's contact with State authorities was unreasonable, if not perhaps illegal. Ms. Roquet was a mandatory abuse reporter. Abuse can take the form of negligence. Ms. Roquet reasonably concluded it was appropriate to alert State authorities of the negligence she had observed in connection with the "full code" and the insufficiently stocked crash cart. The employer reasonably

expected that Ms. Roquet would preserve the employer's confidences by not discussing the matter with non-staff other than appropriate State authorities. The evidence fails to establish that Ms. Roquet discussed the matter, prior to her discharge, with non-staff other than appropriate State authorities. The employer unreasonably expected that Ms. Roquet and others would refrain from discussing the matter with other staff. The weight of the evidence fails to establish that Ms. Roquet behaved unreasonably in discussing with other staff the very serious event that impacted the staff and that had undoubtedly come to the attention of much of the staff. There is no evidence of intimidation, coercion, or "pot stirring" on the part of Ms. Roquet. The weight of the evidence indicates that the employer's goal was to restrict the flow of information to the Department of Inspections and Appeals and that the employer discharged Ms. Roquet for contacting the State agency. Ms. Roquet's conduct did not constitute insubordination, did not constitute misconduct, and would not disqualify her for unemployment insurance benefits.

The evidence also indicates that Ms. Roquet conducted herself reasonably in mid-June when she reported the administrator's abusive behavior to State authorities. At the time, the employer had no policy regarding reporting abuse up the chain of command. Given the nature of the conduct, Ms. Roquet reasonably concluded that the State should be alerted. As a mandatory reporter, Ms. Roquet was obligated to report the conduct.

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

DECISION:

The Agency representative's September 24, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw