

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M HONIG
Claimant

APPEAL NO. 17A-UI-05582-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREEN HILLS AEA
Employer

OC: 04/30/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Lisa Honig filed a timely appeal from the May 19, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Honig was discharged on April 4, 2017 for violation of a known work rule. After due notice was issued, a hearing was held on June 13, 2017. Ms. Honig participated. Jennifer Rice of Equifax represented the employer and presented testimony through Dr. Lane Plugge, Kathleen Hanafan, and Jennifer Barnett. Exhibits A and B 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: Lisa Honig was employed by Green Hills Area Education Agency as a full-time School Based Interventionist/graduation coach from 2006 until April 4, 2017, when Dr. Lane Plugge, Chief Administrator, discharged her from the employment. Ms. Honig was assigned to Thomas Jefferson High School (TJ) in Council Bluffs. Ms. Honig's primary duty was to help at-risk students graduate on time. To do that, Ms. Honig had to coordinate her efforts with teachers, the school administration, AEA personnel, and juvenile court authorities to resolve student-specific impediments to learning. In 2015, Kathleen Hanafan, School District Attendance Supervisor, became Ms. Honig's immediate supervisor. Above Ms. Hanafan in the AEA hierarchy was Jennifer Barnett, Regional Administrator. Because Ms. Honig served TJ students and had an office at TJ, and because the Council Bluffs School District paid a portion of her compensation, she also answered to the TJ Principal, Todd Barnett. Todd Barnett and Jennifer Barnett are husband and wife.

The final incident that triggered the discharge occurred on March 29, 2017. On that day, Ms. Honig left the TJ school building to collect a student for the afterschool program Ms. Honig ran from 3:00 to 5:00 p.m. When Ms. Honig left the school building, she left her office door

unlocked. Ms. Honig's office was located within the TJ shop. The office had a lockable door and Ms. Honig had a key to the lock. While Ms. Honig was away from the building, two students entered her office and used electronic cigarettes or "vaped." Tobacco products are prohibited at TJ. When Ms. Honig returned to the school building, a teacher, Ms. Branson, told Ms. Honig that two students, L.P. and I.H. had been in her office "vaping." Ms. Honig located L.P., who denied he had been "vaping," but asserted that I.H. had been vaping in Ms. Honig's office. Ms. Honig reported the incident to Principal Barnett the next morning, but Ms. Branson had already reported the matter to Mr. Barnett. Ms. Honig's failure to secure her door during her absence on March 29, 2017 occurred in the context of a prior similar incident. In November 2016, Ms. Honig learned that students had used her office toward the start of the school year to smoke either tobacco or marijuana. A student had recorded the conduct and someone subsequently posted the recording on social media. After Ms. Honig learned of the matter in November, she thereafter sometimes locked her office door, but did not do so consistently. Ms. Honig primarily locked her door only if she had something of value in the office. In February 2017, Principal Barnett specifically directed Ms. Honig to lock her office door when she was not in her office, to prevent students from again using the office for misconduct.

In making the decision to discharge Ms. Honig from the employment, the employer considered various other concerns. At the beginning of the 2016-2017 school year, Ms. Honig had commented to supervisor Steve McPhillips that Ms. Hanafan had supported another person for the supervisor position to which Mr. McPhillips had been promoted. The utterance made its way back to Ms. Hanafan. On or about March 15, 2017, Ms. Honig had entered the classroom of teacher Ben Tworek while he was teaching the class. Ms. Honig was upset that Mr. Tworek had backed out on teaching a class as part of the afterschool program. Ms. Honig disrupted the class. Ms. Honig remained in the class for several minutes during which time the students were forced to listen to her chastise Mr. Tworek. Mr. Tworek reported the incident with Teacher Mentor Marybeth Runge shortly after the incident. Ms. Runge reported the incident to AEA Regional Administrator Jennifer Barnett on March 24. Ms. Runge and Ms. Hanafan met with Ms. Honig on March 24 in response to that incident and other concerns. Those other concerns included Ms. Honig's conduct during a March 14, 2017 student success meeting at which Ms. Hanafan had also been present. The meeting included AEA and TJ staff. During the meeting, Ms. Hanafan observed Ms. Honig sat apart from the rest of the group, uttered abrasive comments, and continued to talk over the other participants after the group had moved on the next topic. Ms. Honig asserts that she is naturally a loud person. Ms. Hanafan had told Ms. Honig months earlier that she was going to meet with Ms. Honig for the purpose of training Ms. Honig to better communicate with TJ staff. However, Ms. Hanafan met with Ms. Honig once and then did not return to the training regimen that was to last for six sessions. During a success team meeting on March 21, one or more TJ teachers raised a concern that Ms. Honig was not involving them in a timely enough manner when making changes to student schedules. However, Ms. Honig had in good faith complied to the best of her ability with the evolving protocol pertaining to student schedule changes.

Following the March 29 vaping incident, Dr. Plugge met with Ms. Honig and offered her the opportunity to quit in lieu of being discharged from the employment. Ms. Honig declined. The employer subsequently discharged Ms. Honig from the employment.

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). 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 in the record establishes a final incident on March 29 wherein Ms. Honig was careless by not locking her office door when she left the school building to collect a student. The failure to lock the door was not intentional on the part of Ms. Honig. Ms. Honig acknowledged the opportunity her oversight had provided to the students to use her office for misconduct. Ms. Honig acted responsibly in confronting one of the students about the misconduct in reporting the matter to Principal Barnett the next day without the knowledge that Ms. Branson had already reported the matter. The prior similar incident occurred prior to the Principal's directive to lock the door. In other words, there was no patter of carelessness, negligence or unreasonable refusal to follow a reasonable directive in connection with the failure to lock the office door.

The prior matters that factored in the discharge concerned Ms. Honig's manner of communicating with other professionals. Ms. Honig was clearly out of line and acted contrary to the interest of AEA, TJ administration, and TJ students on March 15 when she disrupted Mr. Tworek's class and chastised him in front of the students. The employer's other concerns were of a less serious nature and appear to have arisen from Ms. Honig being overly-convinced of her mission to advocate on behalf of at-risk students and her lack of insight about how other professionals perceived her utterances.

While the evidence in the record establishes legitimate concerns about Ms. Honig's performance in the employment, the evidence does not establish conduct that rises to the level of substantial misconduct that would disqualify Ms. Honig for unemployment insurance benefits. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Honig was discharged for no disqualifying reason. Accordingly, Ms. Honig is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Honig.

DECISION:

The May 19, 2017, reference 01, decision is reversed. The claimant was discharged on April 4, 2017 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/scn