

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANY DEFRANCE
Claimant

APPEAL NO. 15A-UI-01661-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA HOME CARE LLC
Employer

**OC: 01/11/15
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Brittany DeFrance filed a timely appeal from the January 28, 2015, reference 01, decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the claimant had been discharged on December 31, 2014 for misconduct in connection with the employment. After due notice was issued, a hearing was held on April 13, 2015. Ms. DeFrance participated personally and was represented by attorney Norma Meade. On March 13, 2013, the employer through Charles Ganske, Chief of Marketing and Human Resources, waived participation in the appeal hearing and any challenge to the claimant's unemployment insurance benefit claim in lieu of complying with the subpoena duces tecum that the claimant's attorney requested and the administrative law judge had issued on March 11, 2015.

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: Brittany DeFrance, L.P.N., was employed by Iowa Home Care, L.L.C. as a full-time home healthcare nurse from 2009 until December 31, 2014 when the employer discharged her for alleged ethics violations. On December 15, 2014, Julie Swett, Branch Manager, had suspended Ms. DeFrance without pay pending investigation of complaints the employer had received concerning Ms. DeFrance. Ms. Swett told Ms. DeFrance that she would let Ms. DeFrance know at a later date what the employer's investigative findings were. On December 31, 2014, Ms. Swett met with Ms. DeFrance for the purpose of discharging her from the employment. Ms. Swett alleged that Ms. DeFrance had gone to clients' homes in the absence of a doctor's order to do so. Ms. DeFrance denies the allegation.

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 employer waived its participation in the hearing to avoid having to respond to a subpoena duces tecum and, thereby, did not present any evidence to support the allegation that Ms. DeFrance was discharged for misconduct in connection with the employment that would disqualify Ms. DeFrance for unemployment insurance benefits. The evidence in the record consists solely of Ms. DeFrance's testimony. That testimony referenced an allegation, but did not establish disqualifying misconduct.

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

DECISION:

The January 28, 2015, reference 01, decision is reversed. The claimant was discharged on December 31, 2014 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

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