

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TANARRA GRAY
Claimant

ELLIPSIS INC
Employer

APPEAL NO. 24A-UI-09100-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/17/24
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

On October 22, 2024, the employer filed a timely appeal from the October 17, 2024 (reference 03) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on September 22, 2024 for no disqualifying reason. After due notice was issued, a hearing was held on November 20, 2024. Tanarra Gray (claimant) participated personally and was represented by paralegal Evie Dilts of Iowa Legal Aid. Regina Hughes represented the employer. Exhibits 1, 2, 3, A and B were received into evidence. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding record only insofar as it noted Ms. Hughes' participation in the fact-finding interview and no further.

ISSUES:

Whether the claimant was suspended and/or discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Tanarra Gray (claimant) began her employment with Ellipsis, Inc. in May 2024 as a full-time Temporary Youth Care Worker. Ms. Gray performed her work duties at a residential facility in Johnston. The facility houses male adolescents who are court-ordered to reside at the facility. Ms. Gray's duties involved ensuring the juvenile residents in her care were at all times safe, received appropriate nutrition, practiced appropriate hygiene, and otherwise experienced a structured environment.

In August 2024, the employment transitioned by agreement to part-time, when the residents returned to school after summer break and Ms. Gray returned to her academic studies at Grand View University. Ms. Gray averaged about 15 hours a week in the part-time employment.

Ms. Gray continued to perform part-time work for the employer until September 22, 2024. At that time, the employer indefinitely suspended Ms. Gray from the employment. The indefinite suspension was not based on anything that happened in connection with the employment. Indeed, shortly after Ms. Gray was suspended, the employer reported to Grand View University as part of an externship evaluation that Ms. Gray had performed excellently in all aspects of her work duties. Ms. Gray had not failed to maintain any license, registration, or certification. The indefinite suspension was instead based on a non-work related matter of a non-criminal nature.

As of the November 20, 2024 appeal hearing date, the employer has not recalled Ms. Gray to the employment since placing her on the indefinite suspension.

Ms. Gray established an original claim for benefits that was effective March 17, 2024, prior to the employment at issue in this matter. Following the September 22, 2024 suspension date, Ms. Gray established an "additional claim" for benefits that was effective October 6, 2024. This employer is not a base period employer and, therefore, is not subject to charge for benefits paid to the claimant in connection with the current benefit year that will expire on Saturday, March 15, 2025.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 87124.32(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.

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:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(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.

(...

See also Iowa Admin. Code r. 871-24.32(1)(a) (repeating the text 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 Iowa Admin. Code r.871 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).

The evidence in the record establishes a September 22, 2024 suspension and effective discharge from the employment for no disqualifying reason. The suspension and effective discharge was not based on misconduct in connection with the employment. The employer asserts and/or implies that the administrative law judge should rely on inadmissible evidence to find the suspension disqualifying. However, the eligibility determination cannot be based on inadmissible evidence. Ms. Gray is eligible for benefits, provided she is otherwise eligible.

The employer is not a base period employer for purposes of the benefit year of March 17, 2024 through March 15, 2025 and, therefore, is not subject to charge for benefits paid during the current benefit year. However, the employer's account may be charged for benefits, based on the wages earned during this period of employment, in connection with a future benefit year, if the employer is a base period employer in connection with that future benefit year.

DECISION:

The October 17, 2024 (reference 03) decision is AFFIRMED. The claimant was suspended and effectively discharged on September 22, 2024 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits as outlined above.

A rectangular box containing a handwritten signature in black ink that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

November 21, 2024

Decision Dated and Mailed

r/s

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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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.