

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN N WHITE**  
Claimant

**APPEAL NO. 09A-UI-07369-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EMPLOYMENT  
SERVICICES LLC**  
Employer

**Original Claim: 04/12/09  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Susan White filed a timely appeal from the May 6, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 8, 2009. Ms. White participated. Adam Aswegan, HR Director, represented the employer.

**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: The employer is a post-acute rehabilitation and long term care facility. Susan White was employed by Heartland Employment Services as a full-time Registered Nurse/Charge Nurse from January 30, 2007 until April 15, 2009, when Tonya Henson discharged her for recurrent careless and/or negligence.

The final two matters that triggered the discharge occurred during an overnight shift on the weekend of April 10-12. During the overnight shift, Ms. White's responsibilities included making certain that all doctor's orders for newly admitted patients were reflected on the plan of service that would be used by the staff to provide care to the patient. Ms. White failed to notice that the pharmacy had not documented an order for glucose accuchecks for one of the patients. Ms. White failed to notice that the vitamin D dosage recorded on the plan of service for another patient did not match the dosage in the doctor's order. Ms. White attributed her oversight to the need to juggle her review of the admit paperwork with her duty to provide care to patients. Ms. White was responsible for providing overnight care to up to 30 residents, which would include giving scheduled medications, treatments, assessments, assisting patients to the restroom, and responding to patient call lights. Ms. White worked with the assistance of one Certified Nursing Assistant.

In making the decision to discharge Ms. White, the employer considered prior incidents. On November 25, 2008, Ms. White gave an IV to a patient at a time other than the scheduled time. Ms. White had just come on for her shift and relied upon the statement of the Licensed Practical Nurse who had been caring for the patient. The L.P.N. said it was time for the IV. The employer's established protocol required that Ms. White, the Registered Nurse, check the medical record before giving the IV. On January 20, 2009, Ms. White did not notify the on-call supervisor of a patient's fall. The employer had recently imposed this as an additional step, but Ms. White was not aware of this new requirement. Ms. White notified the doctor and the family of the fall, pursuant to established protocol. On February 2, 2009, Ms. White instructed a Certified Nursing Assistant to deflate the air mattress on top of a patient's bed in order to get the patient into the bed. The patient was short in stature and Ms. White deemed it necessary to deflate the mattress to facilitate getting the patient into bed. The purpose of the air mattress was to protect the resident from skin breakdown. The employer subsequently located a bruise on the patient, but could not connect it with the deflating of the air mattress.

At the beginning of April 2009, the employer had placed Ms. White on probation status due to the incidents cited above.

#### **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).

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 that Ms. White was indeed careless in failing to detect the documentation errors during the weekend of April 10-12, 2009. However, the evidence does indicate that Ms. White had multiple duties she had to juggle. The evidence indicates that Ms. White was careless on November 25, 2008 when she failed to check the medical documentation for the correct time to give the IV. Because Ms. White had not been made aware of the need to notify the on-call supervisor of a patient's fall, the evidence does not establish carelessness in connection with the failure to call the on-call supervisor about the patient fall. The evidence does not establish carelessness in connection with the deflated mattress. The evidence indicates at worst that Ms. White made a good-faith error in judgment when she instructed the C.N.A. to deflate the mattress.

The evidence in the record fails to establish carelessness and/or negligence so recurrent as to indicate a willful or wanton disregard of the employer's interests. The administrative law judge concludes that Ms. White was discharged for no disqualifying reason. Accordingly, Ms. White is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. White.

**DECISION:**

The Agency representative's May 6, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw