

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROSE A STILES**

Claimant

**APPEAL NO. 13A-UI-10788-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**

Employer

**OC: 08/25/13**

**Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
871 IAC 24.26(21) – Quit in Lieu of Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 12, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 11, 2013. Claimant Rose Stiles was not available at the number she had provided for the hearing and did not participate. Cheryl Williams represented the employer and presented additional testimony through Angela Prevo. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant, which record indicates that no benefits have been disbursed to the claimant up to the date of the hearing. Exhibits One through Five 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: Rose Stiles was employed by Good Samaritan Society, Inc., as a full-time Registered Nurse from 2004 until August 23, 2013, when she quit in lieu of being discharged from the employment. Ms. Stiles was assigned to the day shift, 6:00 a.m. to 2:00 p.m.

On August 19, 2013, Ms. Stiles had initialed a medical record to indicate that she had provided wound care to a resident when Ms. Stiles had not in fact provided wound care to the resident. The certified nursing assistants had given the resident a shower that morning. When they were done with the shower, the CNAs left the resident's foot wrapped in a towel in anticipation of Ms. Stiles providing the resident with heel wound care ordered by a doctor. Ms. Stiles was aware of the standing order for wound care and the order was in the resident's medical record at the facility. Ms. Stiles did not make any contact with the resident during her shift. Ms. Stiles did not report to a supervisor, or to the second-shift nurse at shift change, that she had not provided the wound care to the resident. Ms. Stiles left at the end of her shift with the resident's foot still wrapped in the towel. During the second shift, the second shift nurse provided wound

care to the resident. When the second shift nurse went to document the care she had provided to the resident, she observed that Ms. Stiles had documented that she had provided wound care to the resident when she had not. The second shift nurse notified Angela Prevo, Assistant Director of Nursing, of the matter.

Ms. Prevo reviewed video surveillance of Ms. Stiles' shift on August 19, 2013 and saw that Ms. Stiles had never gone near the resident. Ms. Prevo review the resident's medical record and saw that Ms. Prevo had charted that she had given the wound care treatment when she had not. See the last page of Exhibit Three. When Ms. Prevo reviewed the record, Ms. Stiles' entries were not circled. In other words, the documentation indicated that Ms. Stiles had provided the wound care. When Ms. Prevo reviewed the surveillance record for August 19, she observed times where Ms. Stiles was sitting, talking to nursing staff. In other words, Ms. Stiles was not without time during the shift to provide the wound care.

On August 20, Ms. Prevo met with Ms. Stiles to discuss the failure to provide the wound care and Ms. Stiles' documentation that she had provided the wound care. At that time, Ms. Stiles said that she must have accidentally signed the medical record to indicate she had given the care. Ms. Stiles asked whether she could go back and circle the entries to indicate that the entries were made in error. Ms. Prevo told Ms. Stiles that it was too late to do that. It is standard nursing practice to document treatment *after* the treatment had been provided, not before it has been provided. It is standard nursing practice to leave the treatment record blank if the treatment has not been performed. Ms. Stiles was an experienced nurse and was familiar with the appropriate protocol. During the August 20, Ms. Prevo told Ms. Stiles that she would have to let the Director of Nursing, Karen Kaiser, know about the incident and that it could lead to discharge from the employment.

After Ms. Prevo spoke to Ms. Stiles on August 20 and prohibited Ms. Stiles from circling the entries, Ms. Stiles circled the entries anyway.

Ms. Prevo and Ms. Kaiser met with Ms. Stiles. Ms. Stiles again indicated that she had not provided the treatment on August 19, 2013. The employer told Ms. Stiles that the conduct constituted falsification of a medical record. Ms. Kaiser told Ms. Stiles that she could resign or be discharged from the employment. The employer gave Ms. Stiles an opportunity to consider her options. The next day, Ms. Stiles signed a resignation form that indicated she was resigning for personal reasons.

Ms. Stiles established a claim for benefits that was effective August 25, 2013, but has received no benefits in connection with the claim.

#### **REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

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).

The question in this case is whether Ms. Stiles' conduct was limited to carelessness or negligence or whether the conduct included an intentional violation of the employer's work rules or standard nursing practice. While the weight of the evidence does indicate negligent conduct, the weight of the evidence also indicates that Ms. Stiles intentionally violated the employer of the employer's work rules and standard nursing practices by documenting in a medical record that she had provided doctor-ordered wound care treatment that she had not and did not provide to a nursing home resident in her care. There was no legitimate basis for Ms. Stiles to sign her initials on the medical record to indicate that she had provided the treatment. To make matters worse, Ms. Stiles intentionally disregarded Ms. Prevo's directive not to circle the entries on the record and made further marks on the medical record after meeting with Ms. Prevo on August 20, 2013. Ms. Stiles' conduct was in willful and wanton disregard of the employer's interests and of the interests of the resident in her care.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Stiles was discharged for misconduct. Accordingly, Ms. Stiles is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Stiles.

Because Ms. Stiles has not received any benefits in connection with the claim that was effective August 25, 2013, there is no overpayment of benefits to address.

**DECISION:**

The agency representative's September 12, 2013, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs