

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA J NORDSTROM
Claimant

APPEAL NO. 10A-UI-06318-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 07/26/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

Care Initiatives filed a timely appeal from an unemployment insurance decision dated April 14, 2010, reference 02, that allowed benefits to Linda J. Nordstrom. After due notice was issued, a hearing was held in Sioux City, Iowa on June 21, 2010 with Ms. Nordstrom participating. Tom Kuiper of Talx UC eXpress represented the employer in the hearing. Team Director Deb Korver testified. Employer Exhibits One through Three were admitted into evidence.

ISSUE:

Was the claimant discharged for a current act of misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Linda J. Nordstrom was employed by Care Initiatives from April 27, 2009 until she was discharged March 25, 2010. She last worked as an RN case manager.

On March 4, 2010, Ms. Nordstrom was one of several employees attending an in-service training program on nursing facility coordination of care. At the training session, one of the topics covered was required documentation for a resident's chart. On March 12, 2010, Team Director Deb Korver discovered four documents were still missing from one of six residents whose care was being managed by Ms. Nordstrom. She reported this to the Corporate Human Resources Department. On March 25, 2010, Ms. Nordstrom was discharged. She had not been advised in advance that she faced discharge because of the missing documentation.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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. See Iowa Code section 96.6-2. Among the elements that it must prove is that the final incident leading directly to the decision to discharge was both a current act and an act of misconduct.

The evidence establishes that Ms. Korver discovered the omission that led directly to discharge on March 12, 2010. Nevertheless, the discharge did not occur for another 13 days, during which Ms. Nordstrom continued to perform her normal duties. The administrative law judge concludes that the claimant was not discharged because of a current act. Since the act was not current, the administrative law judge need not and does not consider whether the final incident was an act of misconduct or merely an isolated error.

DECISION:

The unemployment insurance decision dated April 14, 2010, reference 02, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs