

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENA K HOWARD
Claimant

APPEAL NO. 12A-UI-13835-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY
Employer

OC: 09/30/12
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Dena Howard, filed an appeal from a decision dated November 9, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 20, 2012. The claimant participated on her own behalf. The employer, Good Samaritan Society, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Dena Howard was employed by Good Samaritan from October 2011 until October 3, 2012 as a full-time nurse manager. Part of her job duties was to fill out forms regarding patient care. “Front line” nurses would assess the resident, fill out a report and submit the report to the claimant. She was then to fill out specific forms regarding the recommendations using the information from the front line staff.

If the form was not filled out the same day the initial assessment report was done, it is standard practice to put a note “LE for” and give additional information. This stands for “late entry for” the patient information. On the forms for one patient the assessments were done on September 21 and 24, 2012. When Ms. Howard filled out the official forms she did not make the “LE for” notation, but dated it the day she filled it out herself which was September 28, 2012.

The employer discharged her for “falsification” of the document.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

There is nothing in the record to indicate Ms. Howard deliberately falsified the document. Instead, this was an inadvertent mistake on one form for one patient without any "wrongful intent." The administrative law judge cannot conclude this single incident rises to the level of substantial, job-related misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of November 9, 2012, reference 01, is reversed. Dena Howard is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll