

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRIS A ARMSTRONG-BARGER**  
Claimant

**APPEAL NO. 14A-UI-00805-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCM CORPORATION**  
Employer

**OC: 12/15/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated January 15, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on February 13, 2014. The claimant participated. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

**ISSUE:**

The issue in this matter is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Chris Armstrong-Barger was employed by ABCM Corporation (Bloomfield Care Center) from January 7, 2013 until December 14, 2013 when she was discharged from employment. Chris Armstrong-Barger was employed as a full-time LPN/Charge Nurse working the 2:00 to 10:00 p.m. shift. The claimant was paid by the hour. Her immediate supervisor was Ms. Jody Sedon, Director of Nursing.

The claimant was discharged on December 14, 2013 based upon an allegation that had been made by a temporary nurse that Ms. Armstrong-Barger had been observed giving dinnertime and bedtime medications to a resident at the same time, rather than waiting until bedtime to administer the second medication.

Ms. Armstrong-Barger was not told of the allegation against her until the time of her discharge. Ms. Armstrong-Barger categorically denied that she had given the two medications to any resident simultaneously. When questioned, the employer was unwilling to provide any further information to Ms. Armstrong-Barger identifying who the resident was, the room number, the hallway or what medications were involved.

Ms. Armstrong-Barger asserts that if there were any errors found on the facility's medical administration records for that night, the clerical error was inadvertent. Ms. Armstrong-Barger maintains that there were no errors on when medications were administered by her.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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.

In discharge cases the employer has the burden of proof to establish disqualifying misconduct. 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 may not necessarily be serious enough to warrant a denial of unemployment insurance 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 a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

Allegations of misconduct without additional evidence shall not be sufficient to result in a 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, if that evidence is not 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).

In the case at hand, Ms. Armstrong-Barger participated personally and provided sworn testimony denying that she had intentionally violated on any occasion medication administration rules or the rules of ABCM Corporation by administering the dinnertime and bedtime medications to any residents. Prior to being discharged the claimant had only been warned on one occasion. That warning in June 2013 took place after Ms. Armstrong-Barger self-reported a medication error.

Ms. Armstrong-Barger testified that she did not intentionally make any medication errors on the night in question and was consistent in her testimony about how evening/bedtime medications were administered to residents. The claimant denies any wrongdoing or violation of company policy and asserts that if a clerical error was made in the medical administration records that evening, the error was not intentional. The claimant further asserts that even if a clerical error had been made that evening, the medications were nonetheless administered properly.

The question before the administrative law judge in this case is not whether the employer has a right to discharge Ms. Armstrong-Barger for these reasons, or for no reason whatsoever. The question is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. While the decision to terminate the claimant may have been sound decision from a management viewpoint, the evidence in the record does not establish intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible

**DECISION:**

The representative's decision dated January 15, 2014, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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