IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SORENSEN, AUDREY, N
Claimant

MERCY HOSPITAL
Employer

APPEAL NO. 10A-UI-17673-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/21/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 15, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 10, 2011. Claimant participated. Sheryl Knutson, Employee Relations Manager, represented the employer and presented additional testimony through Jeanne Hein.

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: Audrey Sorensen was employed by Mercy Hospital in Iowa City as a full-time nursing tech from 2008 until November 19, 2010, when Sheryl Knutson, Employee Relations Manager, Kim Lopez, Nurse Manager and, Jeanne Hein, Director of Nursing, discharged her for falsifying her time reporting information. Ms. Lopez was Ms. Sorensen's immediate supervisor from July 6, 2010 until Ms. Sorensen was discharged from the employment.

On 11 occasions between October 4, 2010 and November 17, 2010, Ms. Sorensen was late for work, bypassed the employer's normal clock-in procedure, and dishonestly documented that she had started work at her scheduled start time. Under the usual procedure, when Ms. Sorensen would arrive for work, she would have to use her employee ID to gain access to the employer's ramp facility and, later, would have to use the same ID to document the time she actually began performing work by swiping the ID through a scanning machine. The employer had an alternative “misclock” paperwork procedure reserved for employees who were unable to use the normal time reporting system. When using the misclock procedure, Ms. Sorensen would have to write her actual start time on the misclock form. Ms. Sorensen had been trained in the procedure. Ms. Sorensen had not used the procedure until October 2010, months after Ms. Lopez had become her supervisor.

The employer was prompted to look into Ms. Sorensen's use of the alternative time reporting system by complaints from nurses that Ms. Sorensen was habitually tardy to work and by the frequency and number of times Ms. Sorensen used the alternative time reporting system rather than the normal clock-in procedure. The employer determined, by reviewing documentation of the time Ms. Sorensen used her ID to gain access to the parking ramp, that Ms. Sorensen had misrepresented on 11 separate instances that she had started work at her 9:30 p.m. start time when she had actually not even entered the parking ramp until after the scheduled start of her shift. October 4, the claimant entered the parking ramp 34 min. after the scheduled start of the shift. On October 6, the claimant entered the parking ramp 22 min. after schedule start of shift. On October 13, the claimant entered the parking ramp 20 min. after the scheduled start of the shift. On October 19, the claimant entered the parking ramp 30 min. after schedule start of the shift. October 20, claimant and the parking ramp 25 min. after the scheduled start of shift. On October 21, the claimant entered the parking ramp 35 min. after schedule start of her shift. On October 25, the claimant entered the parking ramp 21 min. after the scheduled start of her shift. On November 4, the claimant entered parking ramp 30 min. after the scheduled start of her shift. On November 15, the claimant entered the parking ramp 29 min. after the scheduled start of her shift. On November 16, the claimant entered the parking ramp 21 min. after the scheduled start of her shift. On November 17, claimant entered the parking ramp 37 min. after the scheduled start of her shift.

In making the decision to discharge Ms. Sorensen from the employment, the employer also considered an allegation that Ms. Sorensen had falsely reported on November 18, 2010 that she had tested a patient's blood glucose level. The employer had moved Ms. Sorensen to the evening shift to address performance issues that centered on Ms. Sorensen engaging in inappropriate discussions with patients and using her cell phone during work hours. On October 8, 2010, the employer once again disciplined Ms. Sorensen for engaging in an inappropriate conversation with a patient.

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).

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).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The weight of the evidence in the record establishes that Ms. Sorensen was tardy to work 11 times for personal reasons between October 4, 2010 and November 17, 2010. The unexcused tardiness was excessive and constituted misconduct in connection with the employment.

The weight of the evidence establishes that 11 times between October 4, 2010 and November 17, 2010, Ms. Sorensen intentionally and dishonestly documented that she had arrived at work on time, when she had in fact been tardy. The weight of the evidence indicates that Ms. Sorensen knew how to correctly complete the misclock paperwork. The evidence

establishes that Ms. Sorensen worked in an environment where accurate documentation was critical, that Ms. Sorensen was aware of this, and that she had been properly trained.

The administrative law judge finds no merit whatsoever in Ms. Sorensen's assertions that she had been instructed by a prior supervisor, more than half a year before the incidents in question, that she should inaccurately complete the paperwork. The administrative law judge finds no merit whatsoever in Ms. Sorensen's assertion that delay on the part of Ms. Lopez in providing clarification factored in any way in Ms. Sorensen's conduct. The administrative law judge finds no merit whatsoever in Ms. Sorensen's assertion that her prior work injury or FMLA factored in any way in the discharge.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Sorensen was discharged for misconduct. Accordingly, Ms. Sorensen 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. Sorensen.

DECISION:

The Agency representative's December 15, 2010, reference 01, decision is affirmed. 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

_____
Decision Dated and Mailed

jet/pjs