

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER S WILSON**  
Claimant

**APPEAL NO. 08A-UI-04298-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS HEALTH SYSTEM**  
Employer

**OC: 04/06/08 R: 04  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Genesis Health System filed a timely appeal from the April 25, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 19, 2008. Ms. Wilson participated. Jodi Blake, Human Resources Assistant, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One and A 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: Jennifer Wilson was employed by Genesis Health System as a full-time lab technician until April 2, 2008, when Sharon Larrison, Manager of Ancillary Services, discharged her from the employment. Ms. Larrison was Ms. Wilson's immediate supervisor. Ms. Larrison is still employed with Genesis Health System, but did not participate in the hearing. The employer witness lacks any personal knowledge of Ms. Wilson's employment or the circumstances her discharge. The employer witness's testimony is based on documents in Ms. Wilson's personnel file. On February 11, 2008, Ms. Larrison issue a reprimand to Ms. Wilson for "noncompliance with standards of behavior" and failing to treat coworkers with respect. The employer's witness does not have knowledge regarding the specific conduct that prompted the issuance of the reprimand. In March, Ms. Larrison met with Ms. Wilson and two other lab employees to discuss interpersonal conflict amongst the employees. At that time, Ms. Larrison provided Ms. Wilson and her coworkers with a list of things to work on to resolve their interpersonal conflict. After this meeting, Ms. Wilson's relationship with one coworker improved. However, Ms. Wilson's relationship with Medical Technician Darlene Hamilton did not improve. On March 6, Ms. Larrison issued a written reprimand to Ms. Wilson. The allegations set forth in the reprimand were largely based on Ms. Hamilton's report to Ms. Larrison, rather than Ms. Larrison's own observations. Ms. Wilson had worked with Ms. Hamilton for two years before the relationship suddenly went sour. Once the relationship between Ms. Wilson and

Ms. Hamilton took a downturn, Ms. Hamilton began to complain to Ms. Larrison about Ms. Wilson's work. Ms. Wilson requested on several occasions that the employer schedule a meeting that would include the three lab employees and a representative from the employers Employee Assistance Program (EAP). The employer generally promoted utilizing the services of the EAP. Ms. Wilson believed such a meeting was necessary to resolve the interpersonal conflict between herself and Ms. Hamilton. The employer denied Ms. Wilson's request to have an independent arbiter/counselor assist the lab employees in resolving their differences.

On April 2, Ms. Larrison met with Ms. Wilson for the purpose of discharging her from the employment. Once again, Ms. Larrison presented Ms. Wilson with a written reprimand based on a series of allegations made by Ms. Hamilton, but not necessarily observed by Ms. Larrison.

The employer was in the habit of presenting reprimands to Ms. Wilson at the end of the day, shortly before Ms. Wilson had to leave to collect her children from the babysitter. Ms. Wilson is a single parent and was not able to delay collecting her children without incurring a penalty from the childcare provider. For that reason, Ms. Wilson signed the reprimands without writing her own comments on the reprimands.

#### **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).

The employer has failed to present sufficient direct and satisfactory evidence to establish misconduct. The employer provided no testimony from persons with first-hand knowledge of Ms. Wilson's employment. The employer had the ability to present such testimony. The weight of the evidence in the record fails to establish misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Wilson was discharged for no disqualifying reason. Accordingly, Ms. Wilson is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Wilson.

**DECISION:**

The Agency representative's April 25, 2008, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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