

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SELENA L PLATE

Claimant

APPEAL NO. 13A-UI-00496-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANKENY SENIOR HOUSING LLC

Employer

OC: 12/02/12

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Selena Plate filed a timely appeal from the January 15, 2013, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on February 13, 2013. Ms. Plate participated and was represented by attorney, Elizabeth Flansburg. The employer did not respond to the hearing notice instruction to provide a telephone number for the hearing and did not participate.

ISSUE:

Whether Ms. Plate was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Selena Plate was employed by Ankeny Senior Housing, L.L.C., as a full-time certified nursing assistant from July 2012 until December 5, 2012, when the employer discharged her for alleged failure to generate appropriate documentation in connection with a medication she had given to a patient on December 1, 2, and 3, 2012. The medication was one the patient received daily for nausea and Ms. Plate had been under the belief that she did not have to generate the additional documentation in connection with medications given daily. Ms. Plate had received no prior reprimands for documentation errors.

On December 3, 2012, the employer notified Ms. Plate that she was suspended from the employment for two days. At the time of the suspension, Ms. Plate had medical restrictions related to a workplace injury that limited her to sedentary work 75 percent of the time. At the time of the suspension, law enforcement were investigating misappropriation of a patient's medication in a matter wholly unrelated to the documentation issue the employer cited as the basis for suspending Ms. Plate. A few hours prior to notifying Ms. Plate of the suspension, Ms. Plate became aware that an important item of evidence of interest to law enforcement had been located by a coworker. Ms. Plate was then present when the Executive Director, Jewel Russell, instructed the coworker to destroy the item of evidence.

Ms. Plate contacted the employer on December 5, 2012 to get approval to return to work. At that time, Ms. Russell told Ms. Plate she was discharged from the employment.

Ms. Plate believes that the alleged documentation error was but a pretext for suspending and discharging her from the employment.

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 failed to appear for the hearing and thereby failed to present any evidence to support the allegation that Ms. Plate was discharged for misconduct in connection with the employment. The employer presented no evidence to rebut Ms. Plate's assertions that she documented administered medication as she had been directed. The employer presented no evidence to rebut Ms. Plate's assertions that the suspension and discharge were motivated by matters other than an alleged failure to general appropriate documentation when administering medication. The evidence fails to establish misconduct in connection with the employment. Ms. Plate was discharged for no disqualifying reason. Ms. Plate is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's January 15, 2013, reference 03, decision is reversed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/tll