

September 1, 2005, when Interim Co-Directors of the Medical Unit Lynn McDermott and Jan Pacholke discharged her for verbally abusing a patient.

The final incident that prompted the discharge occurred during the overnight shift of August 25-26, 2005 and came to attention of the employer on the morning of August 26. Ms. Kenyi had been assigned to care for two elderly male patients assigned to the same room. One of the patients had been given a sleeping pill, became confused and disoriented, and urinated in his bed. The other patient had a lower than normal oxygen saturation, was confused, and had removed his oxygen mask. Ms. Kenyi was in the room to provide care to the patients several times during the night. In the morning, a nurse complained to Ms. McDermott that Ms. Kenyi had verbally abused one or both patients. The employer declined to identify the coworker who reported the incident and presented no testimony from that employee. Also on August 26, Ms. McDermott received a telephone call from a colleague, Jeanine Ireland, who reported receiving a telephone call from a person who had come to the unit to visit a friend during the overnight shift and was concerned about Ms. Kenyi's interaction with a patient. Ms. McDermott did not learn the name of the person who telephoned Ms. Ireland or have any direct contact with the caller. Ms. McDermott then unsuccessfully attempted to contact other employees who had been working in the unit during the overnight shift. Ms. McDermott consulted with Human Resources Director Carla Waldbillig and Vice President of Patient Services Teresa Rutherford. The three women decided to place Ms. Kenyi on a three-day suspension. Ms. McDermott and Jan Pacholke met with Ms. Kenyi that afternoon for the purpose of imposing the three-day suspension. During the meeting, Ms. Kenyi indicated that it had been necessary for her to speak loudly to the patient who removed his oxygen mask because the patient appeared to be hearing impaired and confused.

On August 29, Ms. McDermott spoke with three employees who had worked the overnight shift with Ms. Kenyi. The nurse who initially reported the incident indicated that she heard Ms. Kenyi yelling at one of the patients, but could not make out the words being uttered. The employee said she thought Ms. Kenyi called the patient an idiot. The employee alleged that Ms. Kenyi kept saying that she could "not wait to get away from these fruit-loops." The employee alleged that Ms. Kenyi had been rude and abusive toward the patients. The employee added that Ms. Kenyi was difficult to work with and that the employee had cared for the same patients a few days later without difficulty. Ms. McDermott then spoke with a second female employee, who specifically requested to remain anonymous. The employer declined to identify this employee and presented no testimony from the employee. This employee alleged that Ms. Kenyi told one of the patients that, "If you're going to pee like a baby, we're going to put a diaper on you like a baby." This employee alleged that Ms. Kenyi referred to the patient as a "looney-tune" and called one of the patients an idiot. Ms. McDermott then spoke with a male charge nurse, who said he heard Ms. Kenyi raise her voice while she was taking care of patients, but did not hear the words uttered. This employee indicated that the second employee had shared with him how upset she was about Ms. Kenyi's inappropriate conduct.

At some point, Ms. McDermott spoke with the patient who had taken the sleeping pill, become disoriented, and wet himself. After Ms. McDermott spoke with the employees who had worked the overnight shift, she consulted with Ms. Waldbillig and Ms. Rutherford. The three women decided to discharge Ms. Kenyi. Ms. Kenyi had received not prior reprimands.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Kenyi was discharged for misconduct in connection with the employment. 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, 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).

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 weight of the evidence in the record fails to establish that Ms. Kenyi verbally abused one or both patients during the overnight shift. The employer refused to corroborate the allegations of misconduct by providing any testimony from firsthand witnesses to the alleged misconduct. The employer declined to identify, and declined to provide testimony from, any of the three employees who were present during the overnight shift. Based on the employer's failure to provide direct and satisfactory evidence despite having the ability to do so, the administrative law judge infers that such testimony would have exposed deficiencies in the employer's case.

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

DECISION:

The Agency representative's decision September 22, 2005, reference 01, 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.

jt/tjc