

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA M HAMILTON
Claimant

APPEAL NO. 07A-UI-01308-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

**OC: 01/14/07 R: 02
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Broadlawns Medical Center filed a timely appeal from the February 2, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was commenced on February 20, 2007 and concluded on February 22, 2007. Claimant Teresa Hamilton participated. Rick Barrett, Contract Engineer and in-house counsel, represented the employer and presented testimony through Susan Kirstein, Operations Director for Acute Care, and Betty Jones, Team Supervisor for Med/Surg Peds. The administrative law judge took official notice of the Agency's record regarding benefits disbursed to the claimant.

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: Teresa Hamilton was employed by Broadlawns Medical Center as a full-time Registered Nurse in the Medical/Surgical Pediatric Unit from January 9, 2006 until January 15, 2007, when Susan Kirstein, Operations Director for Acute Care, Betty Jones; Team Supervisor for Med/Surg Peds; and Francie Jahn, Senior Vice President of Clinical Supervisors, discharged her. Ms. Hamilton had recently received her Registered Nurse licensure at the time she commenced her employment with Broadlawns. Ms. Hamilton generally worked the 3:00 p.m.-to-11:30 p.m. shift.

The final incident that prompted the discharge concerned Ms. Hamilton's shift on January 10, 2007. Ms. Hamilton began the shift with four assigned patients. One of the patients was waiting for a bed in the intensive care unit and required extra care. One of the patients was undergoing detoxification from opiates and required regular medication. All of the patients required ongoing assessment. During the course of the shift, Ms. Hamilton was assigned a new, non-English speaking patient, who had been admitted for alcohol detoxification. During the course of her shift, Ms. Hamilton had to respond to various orders uttered and/or written by two or three doctors who were present on the floor. The doctor's made Ms. Hamilton's work more difficult and time-consuming by not delivering the written orders to Ms. Hamilton per

established protocol. The doctors' orders included directives to withhold medications pending receipt of lab results, directives to withhold medications as new medications were ordered. and other orders to obtain medications from the pharmacy.

Ms. Hamilton could not control the speed at which the lab provided test results or the speed at which the pharmacy provided requested medications. The employer's protocol required the pharmacy to deliver medications to the floor in a timely manner. The pharmacy did not comply with the protocol and advised Ms. Hamilton that it was backed up with orders. Ms. Hamilton continued to check with the lab and with the pharmacy throughout her shift. Several medication orders arrived late or did not arrive at all. The employer's protocol required Ms. Hamilton to go to the pharmacy to obtain requested medications if they were not received in timely manner. However, the need to provide care to and monitor patients prevented Ms. Hamilton from leaving the floor.

Because of her competing responsibilities, Ms. Hamilton was unable to properly assess and reassess all of the patients in her care. During the course of the shift, Ms. Hamilton erroneously switched the infusion rates of lipids and total perenteral nutrition (TPN) administered to a patient. Ms. Hamilton had asked a more experienced nurse to check the infusion set-up, but that nurse was too busy. Two other nurses on the floor were new and required and received greater supervision. Ms. Hamilton's error in setting up the infusions resulted in the patient receiving a larger volume of lipids than ordered and in the patient receiving the lipids at an accelerated rate. At the time Ms. Hamilton left her shift and turned over care of her patients to another nurse, she still did not fully understand the error she had made concerning the lipids and TPN and, therefore, did not report the error to a doctor. Another nurse reported the error.

On January 11, Ms. Hamilton was scheduled to meet with Betty Jones, Team Supervisor for Med/Surg Peds. Ms. Jones had placed Ms. Hamilton on probation in August 2006 after Ms. Hamilton made a significant error in administering insulin to a patient and had continued Ms. Hamilton on probation after Ms. Hamilton made multiple documentation errors and failed to properly assess patients during a November 30, 2006 shift. Before meeting with Ms. Hamilton on January 11, Ms. Jones reviewed some of the charts of the patients Ms. Hamilton had cared for during her January 10 shift. After Ms. Jones met with Ms. Hamilton, Ms. Jones reviewed the rest of the charts. Ms. Jones noted two medication errors, failures to provide appropriate pain management, and failures to provide proper reassessment. On January 12, Ms. Jones notified Ms. Hamilton that she did not need to report for her scheduled weekend shifts, but would need to meet with the employer on January 15. On January 15, the employer discharged Ms. Hamilton for violating the employer's protocols regarding administering medication, pain management, and timely reassessment of patients. None of the three doctors with whom Ms. Hamilton had worked on January 10 had complained about her care of their patients.

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 evidence in the record establishes that Ms. Hamilton committed significant errors during the course of her January 10 shift and failed to comply with multiple established protocols regarding pain management and medication management. The employer called upon Ms. Hamilton to juggle many competing responsibilities during her January 10 shift. Ms. Hamilton lacked the ability to fully meet all of the demands placed on her during the shift. Ms. Hamilton made multiple errors in judgment in her attempt to prioritize and meet the competing demands placed on her. Ms. Hamilton clearly fell short of the employer's expectations and it was within the employer's discretion to terminate her employment. However, the evidence in the record fails to establish a willful disregard of the interests of the employer. Ms. Hamilton's errors in judgment, in the face of competing responsibilities, would not constitute misconduct that disqualifies for

unemployment insurance benefits. See Richers v. Iowa Dept. of Job Service, 479 NW.2d 308 (Iowa 1991). The administrative law judge concludes that the record fails to provide a “current act” upon which a disqualification for benefits must be based. See 871 IAC 24.32(8).

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

DECISION:

The Agency representative’s February 2, 2007, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw