

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICKIE L NANCE**

Claimant

**APPEAL NO. 07A-UI-05773-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEN MEMORIAL HOSPITAL**

Employer

**OC: 05/06/07 R: 03  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Allen Memorial Hospital filed a timely appeal from the May 29, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 2, 2007. Claimant Vickie Nance participated and presented additional testimony through union representative, Tom Morris. Ken Leibold, Director of Human Resources, represented the employer and presented additional testimony through Sara Scoles, Nurse Manager for Allen Home Care, and Diana Schultz, Clinical Home Health Director. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Employer's Exhibits One through Seven were received into evidence.

**ISSUE:**

Whether the claimant was discharged for a "current act" of 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: Vickie Nance was employed by Allen Memorial Hospital as a full-time home health care aide from February 18, 1970 until May 3, 2007, when Ken Leibold, Director of Human Resources, and Sara Scoles, Nurse Manager discharged her for failing to report a patient injury and for failure to properly complete patient billing forms. The injury to the patient occurred on April 9, 2007, while Ms. Nance was assisting a female client with her bath. The resident had abruptly moved to exit the tub. Ms. Nance moved to assist the client. Ms. Nance had a brush in one of her hands and the brush scraped the client's skin. The scrape created a small tear in the resident's skin. Ms. Nance had to apply pressure to the client's skin to stop the tear from bleeding, but thought the matter was resolved at the time she left the client's home. The employer's established protocol required Ms. Nance to report the incident to Nurse Manager Sara Scoles, which Ms. Nance failed to do. The client sought medical treatment for the skin tear. The client brought the incident to the attention of Nurse Manager Sara Scoles on April 13, 2007. After receiving the report from the client, Ms. Scoles conducted no further investigation of the matter and did not interview Ms. Nance regarding the incident or lack of report.

Also on April 13, Home Care Aide Coordinator Jamie Miller brought to Ms. Scoles' attention four patient billing forms Ms. Nance had completed. The purposes of the form were to document services provided to the patient and facilitate patient billing. Ms. Nance had made errors in completing each of the forms. Ms. Nance had used white-out on two documents in violation of the employer's established protocol. Ms. Nance had made errors in recording the clients' names on two or more of the forms. Ms. Nance had received prior counseling and retraining concerning excessive errors on the billing forms she completed. After Ms. Scoles received the billing forms that prompted the discharge, Ms. Scoles conducted no further investigation of the matter and did not interview Ms. Nance regarding the failure to properly complete the forms.

After Ms. Scoles received these reports on April 13, she reviewed the matters with her own immediate supervisor, Diana Schultz, Clinical Home Health Director. Ms. Schultz and Ms. Scoles decided to consult Ken Leibold, Director of Human Resources, and move forward disciplinary action.

Though the matters that prompted the discharge came to the attention of the employer on April 13, the employer did not discuss the matters with Ms. Nance until May 3, at which time the employer discharged Ms. Nance from the employment. At the end of March or beginning of April, Ms. Nance had requested April 26-27 off and the employer had approved the absence. After April 13, Ms. Nance continued to report for work through April 25. Ms. Nance returned to work on April 30 and continued to work on May 1-3. Mr. Leibold was out of the office on April 24, April 30 and May 1.

#### **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 fails to establish a “current act.” See 871 IAC 24.32(8). The evidence indicates that the two matters that prompted the discharge came to the employer’s attention on April 13. The evidence indicates that no further investigation of those occurred after April 13. The evidence indicates that the employer did not notify Ms. Nance that these two matters subjected her to discharge until May 3, 17 days after the conduct came to the attention of the employer. The employer’s delay in following up on the matters with Ms. Nance was not attributable to Ms. Nance. The evidence indicates that Ms. Nance continued to be available to the employer during the period of April 13-25. The evidence fails to establish that Ms. Nance was unavailable to the employer during the period of April 26-29. The evidence indicates that the subsequent delay was also not attributable to Ms. Nance. The employer unreasonably delayed notifying Ms. Nance that the two matters that came to Ms. Scoles’ attention on April 13 subjected her to discharge. Because the evidence fails to establish a “current act,” no disqualification may enter. See 871 IAC 24.32(8). Because the evidence fails to establish a “current act” the administrative law judge need not further consider whether conduct in question was misconduct.

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

**DECISION:**

The Agency representative's May 29, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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