

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONTINA NEVILLE
Claimant

APPEAL NO. 10A-UI-11733-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXCEPTIONAL PERSONS INC
Employer

OC: 07/04/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 17, 2010, reference 01, which held claimant not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on October 6, 2010. Claimant participated personally. Participating on behalf of the claimant was Mr. Luke Guthrie, Attorney at Law. The employer although duly notified did not respond to the notice of hearing by providing a telephone number for the hearing.

ISSUE:

The issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Contina Neville was employed as a full-time direct care support person for Exceptional Persons, Inc. from June 13, 2008 until June 22, 2010 when she was terminated from employment.

The claimant was discharged for a medication documentation error that occurred on or about June 20, 2010. On that date Ms. Neville was in the process of recording the medications that she had dispensed to clients but was interrupted due to an emergency on the floor. After responding to the emergency, Ms. Neville returned to her work but forgot to notate the medications that had been passed out on a medication record book. During that weekend, Ms. Neville remembered her error and corrected it.

At a later date when questioned about whether she had neglected to make a medication entry, Ms. Neville stated that she had not. A short time later the claimant remembered the previous incident where she had returned and made the entry and informed her employer that her previous statement had not been correct. At that time the claimant went on to explain the circumstances that caused her to forget to make the initial entry on or about June 20, 2010.

The employer initially imposed a 3-day suspension for the claimant's error. When Ms. Neville had not been called back to work after a substantial period of time she contacted her employer and at that time was informed the employer had made a decision to escalate her suspension into a discharge for the event that had taken place approximately two weeks earlier.

It is the claimant's position that she believed that she had followed procedures and was not aware that she needed to complete any additional documentation after correcting her previous error.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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. of Appeals 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

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 Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

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.

In this case the claimant participated personally and testified under oath. The claimant testified that she did not intentionally fail to notate the medications provided to clients on a medication record sheet on or about June 20, 2010. The claimant testified that an intervening "emergency" situation on the floor caused her to react to the emergency and then upon her return she did not remember that the notations had not been made as required. Claimant further testified that upon reflecting the matter later, she remembered that the notations may not have been made and corrected her error. It was the claimant's belief that correcting the error was sufficient.

At a later date when questioned about the matter, Ms. Neville did not immediately recall the incident, but admitted her error and explained the situation later that day when she realized the reason for the employer's inquiry. The claimant was told that she was being suspended from work for three days at that time. The claimant, however, was not allowed to return to work and approximately two weeks later was informed that she had been terminated from employment.

Based upon the evidence in the record, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional, disqualifying misconduct. Claimant's initial error was inadvertent and caused in part by an emergency that had occurred on the nursing floor and the claimant concluded based upon her level of knowledge that she had fixed the error and nothing further was necessary.

The question before the administrative law judge is not whether the employer has a right to discharge this claimant for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Act. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the employer has not established intentional, disqualifying misconduct or negligence of such a degree or recurrence so as to manifest equal culpability under the provisions of the law. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 17, 2010, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs