

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TRACIE M WARD
643 - 2100TH ST
EARLING IA 51530-5002

SHELBY COUNTY MYRTUE MEMORIAL
HOSPITAL
ATTN ADMINISTRATOR
1213 GARFIELD AVE
HARLAN IA 51537

Appeal Number: 06A-UI-02834-JTT
OC: 02/05/06 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Tracie Ward filed a timely appeal from the February 23, 2006, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on March 29, 2006. Claimant participated. Human Resources Director Donna Christensen-Mores represented the employer. Exhibits One through Four were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tracie Ward was employed by Shelby County Myrtue Memorial Hospital as a full-time licensed practical nurse in the employer's rural health clinic from November 14, 2005 until February 7, 2006, when Chief Clinical Officer Janelle Nielsen discharged her.

The "final incident" that prompted the discharge concerned complaints Ms. Nielsen had allegedly received regarding Ms. Ward during the last week of employment. Ms. Nielsen declined to discuss any details of the alleged complaints with Ms. Ward. The employer's witness at the hearing could not provide details of the alleged complaints. Nurse Practitioner Jean Stamp had been Ms. Ward's immediate supervisor during the employment and had issued reprimands to Ms. Ward. The employer's witness at the hearing was unable to provide meaningful testimony in support of issuance of the prior reprimands.

Ms. Nielsen and Ms. Stamp both continue in their employment with the employer, but did not testify at the hearing.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Ward 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).

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).

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 of misconduct that might serve as a basis for disqualifying Ms. Ward for unemployment insurance benefits. See 871 IAC 24.32(8). The employer has failed to present evidence to corroborate the allegation that Ms. Ward was discharged for misconduct or had been previously reprimanded for misconduct. See 871 IAC 24.32(4).

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

DECISION:

The Agency representative's decision dated February 23, 2006, reference 04, 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.

jt/kkf