

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA A BRITT

Claimant

APPEAL NO. 09A-UI-10575-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 06/21/09

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Patricia Britt filed a timely appeal from the July 20, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 10, 2009. Ms. Britt participated personally and was represented by Attorney Robert Wilson. Joe Demarest, Human Resources Representative, represented the employer. Exhibit A was received into evidence.

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: Patricia Britt was employed by the University of Iowa Hospitals and Clinics as a full-time Health Tech from 1988 until June 18, 2009, when Jane Hummer, Nurse Manager, and Joe Demarest, Human Resources Representative, discharged her from the employment. Ms. Britt worked in the Family Care Center. Ms. Hummer was Ms. Britt's immediate supervisor. Ms. Britt's duties included entering patient medical histories into the employer's computer system for use at medical appointments. Ms. Britt was responsible for other types of medical documentation in connection with administering vaccines.

The final incident that prompted the discharge occurred on June 10, 2009. On that day, Ms. Britt erroneously entered a patient's Lasix dosage as 400 mg. instead of 40 mg. when she entered the patient's information into the employer's computer system. A doctor noted the error and brought the error to the attention of Ms. Hummer. The erroneous dose would be a fatal dose if administered. A trained medical or nursing professional charged with administering the drug would readily have recognized the 400 mg. dose as an erroneous dose. Ms. Britt was using a new computer system when she entered the erroneous dosage, but this did not cause the data-entry error.

In making the decision to discharge Ms. Britt from the employment, the employer considered prior errors.

On May 29, 2009, the employer suspended Ms. Britt for three days after Ms. Britt failed to follow the established protocol for assuring she was giving the correct vaccine ordered by the doctor and gave the wrong vaccine to a patient. A doctor had ordered a vaccine that would protect the patient against three diseases. Ms. Britt gave the patient a vaccine that protected the patient only from two of the three diseases. Ms. Britt notified the doctor of her error. Ms. Britt failed to notify the charge nurse of her error, though this was required under the established error reporting protocol. Ms. Britt failed to prepare an incident report at the time of the incident, but did prepare a report later. Ms. Britt discovered the error when she attempted to record the vaccination in the employer's system and the system rejected the entry because it did not comport with the doctor's order. Though Ms. Britt was using the new computer system, this did not cause her multiple errors.

Prior to the May 29 incident, the next most recent incident that factored into the discharge was a documentation error from April 2008. In that instance, Ms. Britt erroneously documented that she had given a vaccine when she had not. In January 2008, Ms. Britt had erroneously documented that she had given a particular vaccine when she had in fact given a different vaccine.

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).

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 indicates that the final incident on June 10, 2009, did not merely involve a typographical error. The evidence indicates that Ms. Britt did not exercise a reasonable degree of care in reviewing the information she had entered into the computer system. Ms. Britt's counsel argued through his questions that the Lasix error would have been readily apparent to anyone reviewing the information. If so, the error would have been readily apparent to Ms. Britt if she had reviewed the information she had recorded. The employer asserted there were other problems with the information entered in connection with the final incident, but did not present sufficient proof to establish additional errors.

The evidence indicates Ms. Britt's conduct in connection with the May 29, 2009 incident involved negligence at several steps. Ms. Britt was negligent in failing to follow prescribed steps that would have prevented the vaccination error. Ms. Britt was negligent in both reporting and documenting the error. The evidence establishes additional negligence in connection with the April 2008 documentation of the vaccine that was not given and the administration of the wrong vaccine in January 2008.

The administrative law judge concludes that the negligence toward the end of the employment was sufficiently recurrent to indicate a knowing failure to adhere to standards of conduct the employer reasonably expected of Ms. Britt.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Britt was discharged for misconduct. Accordingly, Ms. Britt is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Britt.

DECISION:

The Agency representative's July 20, 2009, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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