

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET M BYNUM
Claimant

APPEAL NO. 10A-UI-01983-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**Original Claim: 01/03/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated January 27, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits based upon her separation from Care Initiatives. After due notice was issued, a telephone conference hearing was held on March 22, 2010. The claimant participated personally. Participating as witnesses for the claimant were Amy Engen, Delinda Morgan, and Jennifer Streeper. Debra Morgan was sworn in but did not testify, as she was required to resume her duties by the employer during the hearing. The employer participated by Lynn Corbeil, attorney/hearing representative, and witnesses Amy Johnson, Darcy Martinson, and Miriam Ramsden. Employer's Exhibits One through Four were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Janet Bynum was most recently employed by Care Initiatives from October 17, 2008, until January 7, 2010, when she was discharged from employment. Ms. Bynum worked as a part-time certified nursing assistant. Her immediate supervisor was the charge nurse on duty.

The claimant was discharged when the employer believed that Ms. Bynum had failed to follow work directives from a charge nurse, Darcy Martinson, on January 5, 2010, and believed that the claimant had acted in a threatening and insubordinate manner toward Ms. Martinson while on break on January 7, 2010.

On January 5, Ms. Martinson believed that the claimant had not followed her directive to take the vital signs of some residents and prepare others for x-rays. Ms. Martinson did not confront or reprimand the claimant at the time. Ms. Bynum believed that she was following the directive that had been given to her about taking the vital signs, believing that the duties were being accomplished by another worker. The claimant believed that the residents to be prepared for x-rays were ready for those procedures. Although the charge nurse believed the claimant had been gone during this time for an excessive period, the claimant had taken her 15-minute break and approximately five minutes

extra to obtain some trays that were part of her job responsibilities. Ms. Martinson did not confront the claimant about what she believed to be being gone an excessive amount of time on that date.

On January 7, Ms. Bynum entered the facility's break room when Ms. Martinson was present. Ms. Martinson believed that the claimant had made insubordinate statements about her and reported the matter to upper management. Other individuals who were present in the break room did not observe or hear the claimant making the statements that were attributed to her.

Although the claimant had not received any specific warnings for similar conduct during this period of employment with Care Initiatives, a decision was nevertheless made to terminate Ms. Bynum from her employment because the employer had concluded that the claimant's conduct was insubordinate and the claimant had been warned to conduct herself appropriately at the time of re-hire.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is 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.

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 the 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 App. 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).

In this case, the testimony is disputed. It is clear that the charge nurse on January 5, 2010, believed that Ms. Bynum was not following her directives and was gone from the floor for an extended period of time. Ms. Martinson, however, chose not to reprimand or bring the claimant's attention to any deficiencies in her performance on that date. The claimant has denied the employer's allegations and has provided witnesses that generally corroborate the claimant's testimony that she was performing her duties within the general guidelines of her job position.

The testimony with respect to the claimant's conduct on January 7, 2010, is also disputed. Ms. Martinson maintains that the claimant used improper language, including the "f word," in Ms. Martinson's general presence, and Ms. Martinson believed that the claimant's statements were designed to intimidate her. The claimant, in contrast, testified under oath that she did not use inappropriate language and was not directing her statements to or regarding Ms. Martinson. The claimant's testimony was corroborated by another employer who was present.

The question is not whether the employer has a right to discharge an employee for these reasons, but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Ms. Bynum may have been a sound decision from a management viewpoint, sufficient evidence to establish intentional disqualifying misconduct on the part of the claimant has not been shown. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 27, 2010, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw