

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE A SPENCER
Claimant

APPEAL NO. 07A-UI-00847-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 12/10/06 R: 01
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Nicole Spencer filed a timely appeal from the January 17, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 8, 2007. Ms. Spencer participated. Attorney Lynn Corbeil of Johnson & Associates/TALX UC Express represented the employer and presented testimony through Administrator Jack Studer and Nurse Consultant Jane Harter. Employer's Exhibits One through Three were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits. She was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Nicole Spencer was employed by Care Initiatives as a full-time Social Services Coordinator at Westwood Nursing & Rehab from October 26, 2005, until December 14, 2006, when Administrator Jack Studer discharged her for ongoing negligence and/or carelessness in the performance of her assigned duties. On December 7-8, 2006, the employer was the subject to an Iowa Department of Inspections & Appeals complaint audit. During the audit, a state surveyor discovered multiple deficiencies in the employer's documentation of resident social histories and progress notes. Ms. Spencer had been responsible for both documentation processes throughout her employment. In response to the concerns raised by the state audit, Administrator Jack Studer had Nurse Consultant Jane Harter audit progress notes and social histories generated by Ms. Spencer. On December 11, Ms. Harter's audit of Ms. Spencer's work confirmed ongoing and significant deficiencies. The audit revealed a consistent and substantial lack of effort on the part of Ms. Spencer to obtain accurate, reliable and/or complete social histories for nursing home residents. The audit revealed gross omissions and gross misstatements concerning residents' histories or needs. The audit revealed ongoing gross negligence in documenting resident issues and/or needs in progress notes maintained for that purpose. The lack of proper information gathering and documentation hindered the employer from providing appropriate care and support for residents.

Ms. Spencer understood that obtaining accurate, complete, and timely social histories for residents and maintaining accurate and meaningful progress notes were among her “essential functions” as the Social Services Coordinator. These “essential functions” has been spelled out in a written job description Ms. Spencer received at the time of hire. Ms. Spencer had participated in an extended practicum during which she job shadowed the previous Social Services Coordinator and observed proper documentation of residents’ social histories and ongoing social issues/needs. Ms. Spencer received additional training and had the opportunity to access more experienced staff if she had any questions or concerns about the manner in which she was to perform her duties. In addition, manuals for completing the social histories and progress notes were kept in Ms. Spencer’s office and were readily available to her.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Spencer was discharged for misconduct in connection with the employment. It does.

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). The evidence indicates that all of the conduct in issue came to the employer's attention between December 7 and 11 and that Ms. Spencer was discharged on December 14. The evidence indicates a current act.

The greater weight of the evidence in the record establishes that Ms. Spencer knew how to perform her duties, was capable of performing her duties, received sufficient information and guidance to perform her duties, but consistently failed to put forth the necessary effort. The evidence indicates that Ms. Spencer consistently neglected to perform even the most basic core duties of the Social Services Coordinator. The evidence indicates that Ms. Spencer minimizes her culpability for failing to do her job. This includes asking the employer, and the administrative law judge, not to consider the extended practicum as job training. The evidence demonstrates ongoing negligence and/or carelessness sufficient to demonstrate a willful and wanton disregard of the interests of the employer and a violation of the standards of conduct the employer reasonably expected of an employee. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Spencer was discharged for misconduct. Accordingly, Ms. Spencer 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. Spencer.

DECISION:

The Agency representative's January 17, 2007, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw