IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JENNIFER R BLACKWELL
Claimant

HY-VEE INC
Employer

APPEAL NO. 11A-UI-05890-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/03/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jennifer Blackwell filed a timely appeal from the April 26, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 31, 2011. Ms. Blackwell participated. Alice Rose Thatch of Corporate Cost Control represented the employer and presented testimony through Store Director Mike Auderer and Pharmacy Manager Quinn Falk. Exhibits One through Eleven 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.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jennifer Blackwell was employed by Hy-Vee as a full-time staff pharmacist in Ottumwa from 2002 until April 5, 2011, when Store Director Mike Auderer discharged her for repeated carelessness in the performance of her duties. During the last year and a half of Ms. Blackwell's employment, Pharmacy Manager Quinn Falk was her immediate supervisor. The essence of Ms. Blackwell's position as a staff pharmacist was to make certain that the medication disbursed to a patient matched the prescription ordered by the prescribing physician. While pharmacy techs did much of the work of filling the prescriptions, Ms. Blackwell, the pharmacist, was the licensed professional responsible for checking their work to ensure the accuracy of the prescription.

Ms. Blackwell failed to ensure the accuracy of many prescriptions before the employer discharged her from the employment. The final incident that triggered the discharge occurred on April 1, 2011, when Ms. Blackwell failed to catch an erroneous doubling of the dosage for an antidepressant medication. This error followed an error on March 31, 2011, wherein Ms. Blackwell noted on a prescription that the patient should take a pain medication every four hours as needed for pain, rather than every four to six hours as the doctor had ordered. These incidents followed several other similar instances wherein Ms. Blackwell would have let an erroneous prescription go out to a patient had another pharmacist not noted her error and corrected it.

The employer had issued a reprimand to Ms. Blackwell in January 2011 based on an excessive number of "misfills" reaching the customer. The employer placed Ms. Blackwell on probation. The employer warned that additional misfills could lead to termination of the employment. On March 25, 2011, the employer again reprimanded Ms. Blackwell for misfills and warned that another would result in termination of the employment.

In early January, Ms. Blackwell's grandmother had passed away. Ms. Blackwell was off work for a number of days and then returned. Ms. Blackwell thought she was able to perform her duties at the time she returned. Ms. Blackwell subsequently decided that the grief associated with the loss of her grandmother negatively impacted her ability to perform her pharmacy duties and contributed to her errors.

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). 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).

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).

What is perhaps most noteworthy in the evidence is Ms. Blackwell's effort through her testimony to minimize her responsibility for the medication errors that occurred under her supervision, when she was the licensed professional pharmacist responsible for ensuring the accuracy of the prescriptions. Ms. Blackwell concedes there were too many errors, but shifts the responsibility for those onto the pharmacy techs. The evidence indicates that the employer expected the pharmacy techs to make errors and that that was precisely why Ms. Blackwell, the licensed professional and trained pharmacist, was in place to catch those errors before the prescriptions made it to the customer. The evidence establishes a pattern of carelessness on the part of Ms. Blackwell sufficient to indicate a willful disregard of the interests of the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Blackwell was discharged for misconduct. Accordingly, Ms. Blackwell 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. Blackwell.

DECISION:

The Agency representative's April 26, 2011, 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. The employer's account will not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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