

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER R PLOEN
Claimant

CARE INITIATIVES
Employer

APPEAL NO. 21A-UI-02670-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/20/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Jennifer Ploen, filed a timely appeal from the January 4, 2021, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on September 22, 2020 for violation of a known company rule. After due notice was issued, a hearing was held on March 9, 2021. Ms. Ploen participated. Alyce Smolsky of Equifax represented the employer and presented testimony through Brooke Barnes and Heather Marks. Exhibits 1, 3, 4, 7, 8 and A 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: The claimant was employed by Care Initiatives, doing business as Kingsley Specialty Care, as a full-time Registered Nurse until September 22, 2020, when the employer discharged her from the employment for "Falsification of documentation ... of treatments that were signed off as completed and not completed [,] resulting in a negative outcome to resident." The employer is a skilled nursing facility. The claimant began her employment in 2011 as a Licensed Practical Nurse. The employer reviewed its policies with the claimant at the start of the employment. The claimant was aware of the employer's policies and standards for nursing care throughout the employment. The claimant became a Registered Nurse in 2013. The claimant's duties included passing medications to residents and providing physician-ordered treatments. Such treatments included dressing changes intended to prevent elderly residents from suffering skin breakdown at pressure points.

The conduct that factored in the discharge occurred on September 19 and 20, 2020. On both dates, the claimant documented in the computer chart that she had performed the physician-ordered daily dressing change on a particular patient in her care, when the claimant had in fact not performed the dressing change. Nor had the claimant confirmed that the nurse colleague

had performed the bandage change. The claimant was aware that she was to document only the nursing treatment that she personally provided and that she was to document the treatment only after the treatment had been provided. The false documentation and neglect of the patient's care came to the employer's attention on September 21, 2020, when the nurse on duty went to change the resident's dressing and discovered the dressing change dated September 18, 2020, which indicated dressing had not been changed for two days. In addition, the resident was now experiencing skin breakdown at the pressure point. The nurse who discovered the patient neglect reported the matter to Brook Barnes, Administrator, and provided the dressing/bandage dated September 18, 2020. When the employer questioned the claimant as part of its investigation, the claimant attributed the failure to provide the treatment and false documentation to a miscommunication between the claimant and a colleague.

On September 21, 2020, the employer notified the claimant that she would be suspended pending completion of the investigation. At the time the employer notified the claimant of the suspension, the claimant responded "F this" and hung up on the employer. The discharge followed the next day. The employer deemed the false documentation combined with the adverse outcome for the resident to be a serious violation under the employer's work rules and to warrant discharge based on the first offense violation. The conduct also violated nursing standards.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 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). 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).

The evidence in the record establishes a discharge for misconduct in connection with the employment. During the hearing, the claimant stuck to unreasonably minimizing, excusing, and deflecting responsibility for what were clear violations of nursing standards and the employer's work rules, violations that led to an adverse outcome for a resident/patient in the claimant's care. Two days in a row, the claimant, an experienced nurse, knowingly violated the employer's work rules and nursing standards. Two days in a row, the claimant falsely documented that she had provided a treatment she had not provided. Two days in a row, the claimant neglected the patient's care. A reasonable person would conclude the claimant's conduct contributed to the worsening of the resident's condition at the pressure point dressing site. The claimant's conduct exposed the employer to potential sanction and other potential liability in connection with the neglect of the resident's care and worsening of the resident's condition. The claimant's conduct reflected an intentional and substantial disregard of the resident's wellbeing and of the employer's interests. The employer was under no obligation to wait until the claimant caused more serious harm to a patient before discharging the claimant from the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The January 4, 2021, reference 01, decision is affirmed. The claimant was discharged on September 22, 2020 for misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

March 18, 2021
Decision Dated and Mailed

jet/lj

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received.**