

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NANCY J WASSON
Claimant

APPEAL NO. 08A-UI-03085-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 03/02/08 R: 03
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Nancy Wasson filed a timely appeal from the March 25, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 14, 2008. Ms. Wasson participated. Marie Peeters, Human Resources Manager, represented the employer and presented additional testimony through Roe Lloyd, Central Sterilization Manager. Exhibits One through Nine, and Exhibit 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: Nancy Wasson was employed by Mercy Hospital in Iowa City on a full-time basis from July 19, 1976 until March 3, 2008, when Marie Peeters, Human Resources Manager, and Roe Lloyd, Central Sterilization Manager, discharged her. In September 2000, the employer demoted Ms. Wasson from Central Sterilization Manager to Central Sterilization Tech I. In September 2004, Mr. Lloyd became Ms. Wasson's immediate supervisor.

The final incident that prompted the discharge occurred on February 27, 2008, when a coworker, Judith Humphrey, came in contact with a labeling gun Ms. Wasson had been holding. Ms. Humphrey had been using the labeling gun to label items on a cart. Ms. Wasson also needed to use the labeling gun. At one point, Ms. Wasson was standing near Ms. Humphrey and was holding the labeling gun. Ms. Humphrey turned and ran into the labeling gun. The contact caused a contusion or bruise on the coworker's face. Ms. Humphrey immediately reported the incident to Team Leader Rhonda Miller, who observed a reddened area on Ms. Humphrey's face. On the morning of February 28, Ms. Humphrey reported the incident to Mr. Lloyd. Ms. Humphrey indicated that she had been standing at a cart, turned around, and at that time Ms. Wasson hit her in the face with the label gun. Ms. Humphrey provided Mr. Lloyd with the names of other employees who had either witnessed the event or been in the vicinity at the time of the event. Employee Kathy Fisher contacted Mr. Lloyd and reported that she had

been 30 feet away when she saw Ms. Wasson hit Ms. Humphrey. Mr. Lloyd contacted employee Stephanie Ronan, who said she saw Ms. Wasson hit Ms. Humphrey, but thought the two were just playing around. Mr. Lloyd then spoke with employee Heidi Greiner, who said she did not observe the incident, but had heard shouting and thought the two were joking around until Ms. Humphrey became serious. All of the interviewed employees, except Ms. Greiner, are still with Mercy Hospital, but did not testify. After Mr. Lloyd spoke with these employees, he conferred with Marie Peeters, Human Resources Manager, and the two concluded the incident constituted a dischargeable offense.

On March 3, Mr. Lloyd and Ms. Peeters met with Ms. Wasson for the purpose of discharging her from the employment. This was the first time the employer discussed the incident with Ms. Wasson. Ms. Wasson indicated that she had just "tapped" Ms. Humphrey with the label gun. Once Ms. Wasson had given her statement regarding the incident, Mr. Lloyd told Ms. Wasson that she was discharged from the employment.

Ms. Wasson had a history of anger management issues and of instigating interpersonal conflict with her coworkers through offensive and/or vulgar remarks. Ms. Wasson's prior contact had prompted several disciplinary warnings. Ms. Wasson's disrespectful demeanor and remarks had prompted a disciplinary suspension in December 2007. In May 2002, Ms. Wasson grabbed a coworker by the face in an assaultive manner. That incident prompted a referral to the employer's Employee Assistant Program.

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).

The evidence in the record fails to establish, by a preponderance of the evidence, that Ms. Wasson engaged in conduct designed to bring about contact between Ms. Humphrey and the labeling gun. The employer has failed to present testimony from the alleged victim or any of the witnesses to the incident that prompted the discharge. All but Ms. Greiner continue to work for the employer and could have been made available to testify about the details of what actually happened on February 27, 2008. In the absence of such testimony, the administrative law judge is unable to conclude that Ms. Wasson’s actions concerning the contact between Ms. Humphrey’s face and the labeling gun were willful. The history of prior reprimands explains why the employer may have concluded the final incident was merely the end of a long pattern of disagreeable behavior. However, the evidence in the record directly concerning the final incident is insufficient to establish misconduct in connection with that particular incident. The administrative law judge concludes that the evidence fails to establish a “current act” of misconduct. See 871 IAC 24.32(8). Accordingly, the discharge would not disqualify Ms. Wasson for unemployment insurance benefits. Ms. Wasson is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits paid to Ms. Wasson.

DECISION:

The Agency representative's March 25, 2008, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css