

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA D HANSEN

Claimant

APPEAL NO. 13A-UI-08307-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIRKSVILLE MANOR CARE

Employer

OC: 04/07/13

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Pamela Hansen filed a timely appeal from the July 10, 2013, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on August 20, 2013. Ms. Hansen participated. Jean Kirkpatrick represented the employer and presented additional testimony through Chelsea Edde, Lila Beaty, and Kelley Benowitz. Exhibits One through Eight, 10 through 16, 18, 19 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: Pamela Hansen was employed by Kirksville Manor Care as a full-time Licensed Practical Nurse from April 19, 2013 until June 13, 2013, when Jean Kirkpatrick, Administrator, discharged her from the employment for directing a certified nursing assistant/certified medication assistant to pass medications to nursing home patients in violation of Missouri law. On June 12, 2013, Ms. Hansen enlisted the assistance of CNA/CMA Chelsea Edde to pass medications to three nursing home patients who were at that time in one of the facility's dining rooms. Ms. Edde was a new employee and had started with the employer on the same day that Ms. Hansen. Ms. Hansen knew that CNAs could not pass medications. Ms. Hansen did not want to enter the dining room because she is allergic to tuna and the facility was serving tuna for dinner. When Ms. Hansen asked Ms. Edde to pass the medications, Ms. Edde told Ms. Hansen that she was only a CMA and not a CMT (Certified Medication Technician) and could not pass medications in a long-term care facility. Ms. Hansen pleaded with Ms. Edde to pass the medications to the three residents anyway and Ms. Edde acquiesced. Another staff member saw Ms. Edde passing the medications and reported the incident to the nursing staff. The employer immediately suspended Ms. Hansen and Ms. Edde. The employer subsequently interviewed Ms. Hansen and Ms. Edde and collected statements from other employee who had been present or had been involved, directly or indirectly, in responding to the incident.

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) alone. 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 weight of the evidence in the record establishes intentional misconduct, rather than mere negligence. The weight of the evidence indicates that Ms. Hansen insisted that an unauthorized person assist her with passing medications to three patients in a long-term care facility in violation of Missouri law. Ms. Hansen knew that Ms. Edde had CNA credentials and knew that a CNA could not pass medications. At the time of the incident, Ms. Edde specifically told Ms. Hansen that she was also a CMA, rather than a CMT, and therefore was not authorized to pass medications in a long-term care facility. Ms. Edde made clear the limit to the scope of her practice as a CNA/CMA. Ms. Hansen disregarded that information and directed Ms. Edde to exceed the authorized scope of her practice. The weight of the evidence does not support Ms. Hansen's assertion that Ms. Edde somehow broke rank and decided on her own to pass the medications. Ms. Edde was a new employee and was following the directions given to her by a nurse, a higher ranking staff member with authority over her work. The employer's response was swift and understandable. The conduct was in willful disregard of the employer's interest in providing care that complied with Missouri law and constituted misconduct in connection with the employment. While the administrative law judge is empathetic to the tuna allergy issue, which he concludes was indeed a bona fide concern, that factor does not mitigate or excuse directing another employee to exceed the scope of practice authorized and limited by law.

Ms. Hansen 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.

DECISION:

The Agency representative's July 10, 2013, reference 04, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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