

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOIS R WARE-STOUGH
Claimant

APPEAL NO. 12A-UI-12531-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 09/16/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Good Samaritan Society Inc. filed a timely appeal from a representative's decision dated October 9, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on November 14, 2012. Claimant participated. The employer participated by Ms. Shannon Krantz, Director of Nursing and Ms. Denise Leal. Employer's Exhibits One through Six were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Lois Ware-Stough was employed by the Good Samaritan Society from July 18, 2001 until September 7, 2012 when she was discharged from employment. Ms. Ware-Stough was employed as a full-time licensed practical nurse and was paid by the hour. Her immediate supervisor was Denise Leal.

The claimant was discharged based upon the employer's belief that the claimant had observed a certified nursing assistant transfer a resident without assistance, in violation of the resident's nursing orders. The employer also believed that the claimant had failed to report the mandatory reporting incident within 24 hours as required.

During the incident in question Ms. Ware-Stough had observed a certified nursing assistant coming out of a resident's room. Because the claimant did not observe the nursing assistant to have any help with her, the claimant commented to another nurse her observation that the aide did come out of the room alone advising the other nurse to make sure that aides that came from different wings in the facility to assist, were aware of the resident requirement on the wing where Ms. Ware-Stough and the other worker were located.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the evidence establishes that the employer made a management decision to terminate the claimant based upon statements from other individuals that led the employer to believe that Ms. Ware-Stough had observed an improper patient transfer and had failed to

report it to upper management within a 24-hour period as required. In support of its position the employer relies upon hearsay testimony. In contrast the claimant appeared personally and testified with specificity she did not observe an improper transfer and did not indicate to the other nurse that she had observed an improper transfer. The claimant further testified that she had only stated that she had seen an aide come out of a resident's room alone and made the comment that the nurses on the wing should insure that aides that came from a different area of the facility were aware of the resident needs in the wing where Ms. Ware-Stough and the other nurse were working.

While hearsay evidence is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony provided the testimony is credible and not inherently improbable. The administrative law judge finds that the weight of evidence to be established in favor of the claimant.

While the decision to terminate Ms. Ware-Stough may have been a sound decision from a management viewpoint the evidence in the record does not establish sufficient intentional misconduct to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 9, 2012, reference 01, is affirmed. The claimant was dismissed under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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