

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LETASHA L BAXTER

Claimant

APPEAL NO. 12A-UI-08795-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MERCY HEALTH SERVICES – IOWA CORP
MERCY MEDICAL CENTER – NORTH IOWA**
Employer

OC: 07/01/12

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Letasha Baxter filed a timely appeal from the July 20, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 15, 2012. Ms. Baxter participated personally and was represented by Roger Sutton, attorney at law. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

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: Letasha Baxter was employed by Mercy Medical Center in Charles City as a full-time medical assistant until June 22, 2012, when Linda Gable, office manager, notified her she was discharged from the employment. Ms. Gable was Ms. Baxter's immediate supervisor.

The final incident that triggered the discharge concerned a prescription refill order that had been faxed to a pharmacy without the health care provider's signature. The prescription was for Ms. Baxter. The prescription was for Lortab, a narcotic pain medication. Ms. Baxter had been under the care of Nurse Practitioner Joanne Robinson and had been prescribed Lortab since January 2012. Ms. Robinson was associated with the Charles City clinic where Ms. Baxter worked. Ms. Baxter had written her name on the prescription order. Another employee, per agency protocol, had written out the prescription refill information and signed both the employee's name and the provider's name. Under the employer's protocol, the Nurse Practitioner would be expected to further sign the prescription order within 24 hours and to do so prior to the prescription order being transmitted to a pharmacy. Ms. Robinson had not signed the prescription order before Ms. Baxter faxed that prescription order, along with others, to a pharmacy. Ms. Baxter's conduct involved an unintentional failure to obtain the provider

signature before transmitting the prescription order, rather than an intent on the part of Ms. Baxter to bypass the established protocol to obtain a medication without authorization.

At the time of discharge, the employer cited other events as a factor in the discharge.

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 employer did not participate in the hearing and, thereby, failed to present any evidence to support the allegation that Ms. Baxter was discharged for misconduct. The evidence in the record indicates a single incident of carelessness and negligence, but does not establish intentional misconduct or a pattern of careless or negligence indicating a willful disregard of the employer's interests. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Baxter was discharged for no disqualifying reason. Accordingly, Ms. Baxter is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Baxter.

DECISION:

The Agency representative's July 20, 2012, 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/kjw