

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANELLE R THOMAS
Claimant

APPEAL NO. 07A-UI-10805-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 10/07/07 R: 03
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 15, 2007, reference 05, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on December 10, 2007. Claimant participated. Employer participated through Patti Kromray and Tim Bouseman and was represented by Lynn Corbeil of Johnson & Associates. Employer's Exhibits 1 through 10 were received.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time LPN charge nurse from March 30, 2007 until October 9, 2007 when she was discharged. On October 8 a CMA reported that on October 6 claimant recorded information after 3:00 pm when her shift ended at 2:42 p.m. Claimant worked the 6:00 a.m. to 2:00 p.m. shift and the 2:00 p.m. to 10:00 p.m. shift nurse called in so she stayed late to chart since there was no one else to cover for the 57 patients. There were three "hot charts" for resident issues and the incoming nurse would have to work with a medication aide who cannot chart, so she stayed late to help with the resident assessment for that shift. Claimant did actually assess these three residents at 1:00, 1:15 and 2:00 p.m. She usually worked the 3:00 p.m. to 11:00 p.m. shift so out of habit she wrote them as having been done at the normal time for her regular shift: 1300, 1315 and 1400. She then left at about 3:00 p.m. She clarified the issue with employer at the termination meeting. Employer responded, "If the state comes in here and asks about this I can't tell them my nurse is too stupid to do military time." Claimant checked with the state nursing board and was told that it would have been appropriate to cross out the erroneous time, insert the correct time, and initial the change since the assessments were actually done.

Claimant had not seen Employer's Exhibits 1 and 1A but was warned in writing on October 4 about a medication error after reporting a narcotic given on September 14 that was not checked

out of the medication box. There was a new computer system and she could sign for the medication on computer system but the resident refused it and claimant did not know how to reverse that in computer system but did accurately report on the medication administration record (MAR).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What

constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer has not met the burden of proof to establish that claimant acted deliberately or negligently to the point of disqualification. Given that the error was benign and the nursing board allowed the time recording error to be corrected since the assessments were actually done, employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The November 15, 2007, reference 05, decision is reversed. The claimant was discharged from employment for no current disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css