

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER C CLARK**  
Claimant

**APPEAL NO. 09A-UI-02714-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 01/11/09**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Jennifer Clark filed a timely appeal from the February 10, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 17, 2009. Ms. Clark participated. Michelle Hawkins of Johnson & Associates/TALX UC eXpress represented the employer and presented testimony through Gina Hommer, Director of Nursing. Exhibits One through Six 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: Jennifer Clark was employed by Care Initiatives as a full-time Licensed Practical Nurse (L.P.N.) at Southern Hills Specialty Care, a long-term care facility in Osceola. The employment began on April 1, 2008 and ended on January 14, 2009, when Gina Hommer, Director of Nursing, discharged Ms. Clark from the employment. Ms. Hommer was Ms. Clark's immediate supervisor.

The final incident that prompted the discharge occurred on January 11, 2009 and came to the employer's attention on January 12, 2009. On January 8, 2009, Ms. Clark failed to perform a dressing change on a resident's wound. Ms. Clark was aware that the dressing change was to occur every three days and was due on January 11. Ms. Clark was the person responsible for performing the dressing change on January 11. Though Ms. Clark did not perform the dressing change, she charted that she had in fact performed the dressing change. On January 12, the skin nurse, Nancy Huston, L.P.N., examined the resident's wound and removed the bandage that was dated January 8, 2009. A foul odor emitted from the wound, cellulitis had set in, and the wound was infected. Ms. Clark asserts that she was concerned about the pain the resident would experience in connection with the dressing change, but pain medication had been authorized and could have used to diminish or eliminate the resident's pain.

The final incident followed previous reprimands or counselings. On May 5, 2008, Ms. Clark left her post and left work at the end of her shift without giving shift-change report to another nurse and without giving the narcotics report to another nurse. The incoming nurse assigned to Ms. Clark's unit was late in arriving. Ms. Clark knew she was required to wait for the incoming nurse to arrive and required to give shift change report to a nurse to ensure continuity of care for the residents in her care. Ms. Clark knew she was required to perform an accounting of the narcotic medications on hand with the incoming nurse. Ms. Clark did not notify the employer that she was leaving without giving shift-change report and did not locate another nurse who could have received the shift-change report. The incoming nurse arrived 15 minutes after the scheduled end of Ms. Clark's shift. On June 9, 2008, Ms. Clark generated an incomplete incident report. However, the employer had recently begun using a different form and Ms. Clark's omissions may have been due to lack of familiarity with the form. On August 13, 2008, Ms. Clark failed to fully and accurately transcribe all important information onto the 24-hour report that would be used to ensure continuity of care and quality of care of the residents in her care. On August 19, 2008, Ms. Clark failed to complete and/or process paperwork for which she was responsible. The paperwork concerned upcoming doctor appointments for the residents in Ms. Clark's care. Ms. Clark had agreed to process additional incoming paperwork, but failed to do so. This paperwork included incoming faxes concerning resident care. On August 22, Ms. Clark failed to appear for a mandatory nursing in-service meeting.

#### **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 weight of the evidence in the record establishes misconduct in connection with final incident that disqualifies Ms. Clark for unemployment insurance benefits. Not only did Ms. Clark fail to perform a scheduled dressing change with negative consequences for the resident, but Ms. Clark also charted that she had in fact performed the dressing change. Ms. Clark’s failure to perform the dressing change prevented her from ascertaining whether the wound was infected at that time, may have delayed addressing the infection, and may have made the resident’s condition worse. Ms. Clark’s purported concern for the resident’s discomfort did not provide a reasonable basis for foregoing the dressing change and does not explain why she charted that she had performed the dressing change. Ms. Clark knew that her primary duty was to provide skilled nursing care to ensure the resident’s welfare. That meant doing the dressing change on schedule. Ms. Clark knew that pain medication was available to address the discomfort or pain the resident would experience in connection with the dressing change. Ms. Clark’s charting of the dressing change amounted to falsification of a medical record. The weight of the evidence indicates the final incident followed prior incidents of carelessness or negligence.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Clark was discharged for misconduct. Accordingly, Ms. Clark 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 paid to Ms. Clark.

**DECISION:**

The Agency representative's February 10, 2009, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs