

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELSABETH L JENSEN**  
Claimant

**APPEAL NO: 12A-UI-10942-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIDGECREST VILLAGE**  
Employer

**OC: 08/29/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated August 29, 2012, reference 02, that held the claimant was not discharged for misconduct on August 10, 2012, and benefits are allowed. A telephone hearing was held on November 15, 2012. The claimant, and Attorney John Singer, participated. Gina Houzenga, HR Director, participated for the employer. Employer Exhibits 1 – 3 and Claimant Exhibits A and B were received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on April 20, 2011, and last worked for the employer as a full-time LPN on August 10, 2012. She received the employer policies in an employee handbook. The policy provides for progressive discipline.

The employer issued claimant warning records on August 17, 2011, September 20, 2011, and January 6, 2012. On August 5, 2012 claimant as one of her regular work duties was assigned to dress and pack a resident's wound. In order to do it, she trimmed some dead skin to reach the wound bed. On August 10 the D.O.N. questioned claimant about the matter, and she admitted cutting away the dead skin. The D.O.N. discharged claimant for acting outside the scope of her nursing practice by cutting away the dead skin. Claimant was unaware she was acting outside the scope of her nursing practice and the employer failed to provide any legal basis for this issue. None of the prior warnings issued to claimant involved this practice issue.

## 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.

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on August 10, 2012.

The employer could offer no rule, regulation or other legal basis that claimant acted outside the scope of her nursing practice by trimming dead skin in order to perform her nursing duty to treat a resident wound. Since she had not previously been warned about this issue, there is no standard of behavior violation as to this matter. There is no current act of misconduct regarding claimant's wound treatment on August 5 that led to her discharge on August 10.

**DECISION:**

The department decision dated August 29, 2012, reference 02, is affirmed. The claimant was not discharged for a current act of misconduct on August 10, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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