

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH M JOYE**  
Claimant

**APPEAL NO. 11A-UI-07478-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE IOWA CLINIC PC**  
Employer

**OC: 05/08/11  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 31, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 30, 2011. Claimant participated. Karen Evison, administrator of men's and women's health services, represented the employer and presented additional testimony through Marian Klein, employment coordinator.

**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: Sarah Joye was employed by The Iowa Clinic as a full-time certified medication aide from 2007 until May 9, 2011, when Karen Evison, administrator of men's and women's health, discharged her from the employment. The incident that triggered the discharge occurred on March 6, 2011. A physicians' assistant directed Ms. Joye to give a particular dose of an antibiotic medication to a patient. Ms. Joye could not locate the particular dosage ordered, but located a dosage that was half the amount ordered by the physician's assistant. The dose Ms. Joye located was what would ordinarily be the regular dose. Ms. Joye provided that dose to the patient and charted she had done so. Ms. Joye did not tell the physicians' assistant that she had given a dose that differed from the dose ordered. Soon after the patient was treated, the physicians' assistant noted the deviation from the order while reviewing the computerized patient chart. With the assistance of other clinic staff, the physicians' assistant was able to locate the correct dosage in the clinic, though it was not in its regular place.

## 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 asserts that Ms. Joye intentionally exceeded the scope of her authority by giving a dose of the medication that differed from the dose ordered by the physicians' assistant. Ms. Joye asserts that she merely got busy and forgot to notify the physicians' assistant that she was unable to locate the ordered dose. In the absence of testimony from the physicians' assistant or others immediately involved in the incident, there is insufficient evidence in the record to establish an intentional disregard of the employer's policies. While there is sufficient evidence to establish negligence in connection with the incident, a single episode of ordinary negligence is not sufficient to establish misconduct in connection with the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Joye was discharged for no disqualifying reason. Accordingly, Ms. Joye is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Joye.

**DECISION:**

The Agency representative's May 31, 2011, reference 01, decision is affirmed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw