

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL C LUKEHART
Claimant

APPEAL NO: 13A-UI-08663-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 06/09/13
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 July 19, 2013, reference 02, that held the claimant was not discharged for misconduct on June 7, 2013, and benefits are allowed. A telephone hearing was held on August 14, 2013. The claimant participated. The employer submitted Exhibits 1, pages 1– 5 was 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 witness testimony and having considered the evidence in the record finds: The claimant began employment on August 2, 2011, and last worked for the employer as a full-time LPN on June 7, 2013. The employer issued claimant disciplinary warnings during the course of his employment.

The employer discharged claimant on June 7, 2013 for failing to chart a resident incident. Prior to discharge, the employer gave claimant the opportunity to quit and he declined. Claimant denies the charting incident and states the employer could not offer a date when it occurred.

The employer did not call in with a name and phone number for a person to be called for the hearing. The employer representative submitted faxed documents on August 10 that was received as evidence.

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 June 7, 2013.

The employer documents show claimant was disciplined during his employment. It must establish the most recent incident is misconduct and it failed to do so in this matter.

DECISION:

The department decision dated July 19, 2013, reference 02, is affirmed. The claimant was not discharged for a current act of misconduct on June 7, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css