

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONNI SNIDER**  
Claimant

**APPEAL NO. 12A-UI-09939-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CCRC OF GRIMES LLC**  
Employer

**OC: 09/25/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Ronnie Snider filed a timely appeal from a representative's decision dated August 15, 2012, reference 04, which held her ineligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 13, 2012. The claimant participated. Participating as a witness was Karen Beck, former director of nursing. The employer, CCRC of Grimes, LLC, participated by Mr. Tim Jordison, executive director. Employer's Exhibits A, B, and C, and Claimant's Exhibits 1, 2, and 3 were received into evidence.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Ronni Snider was employed by CCRC of Grimes, LLC, doing business as Kennybrook Village, from October 10, 2011, until July 12, 2012, when she was discharged from employment. Ms. Snider was employed as a full-time LPN/charge nurse and was paid by the hour. Her immediate supervisor was Karen Beck.

Ms. Snider had been placed on a performance improvement plan in June 2012. The employer was concerned about a number of issues and required the claimant to undergo private sessions with an employee assistant counselor and to meet a number of goals in her performance improvement plan in order to remain employed by Kennybrook Village. The goals included effecting positive communication with team members, completing work tasks timely, maintaining positive team leadership skills, focusing on resident care, and maintaining a high level of professionalism when communicating with team members.

After being presented with the employer's expectations on June 15, 2012, Ms. Snider endeavored to improve in the areas of the employer's dissatisfaction. On a number of occasions, Ms. Snider conferred with her immediate supervisor, Karen Beck, to determine if she was meeting goals and Ms. Beck assured the claimant that her performance was improving and the employer's expectations were being met.

During this time, it appears that the employer had hired an additional registered nurse. Later, because of overstaffing issues, the employer made a management decision to terminate Ms. Snider, because they felt that the new nurse had superior skills. The employer concluded that the claimant's communication skills expectations had not been fully met and therefore decided to discharge the claimant and retain the other newly hired nurse as an employee.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes willful misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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 App. 1992). 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 upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 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 Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this matter, the employer made a management decision to terminate Ms. Snider. Although the claimant had been informed on a number of occasions by her immediate supervisor that her performance was improving and that she was meeting the expectations of the employer's performance improvement plan, the claimant's employment was nonetheless terminated. The claimant's former supervisor, Ms. Beck, testified at the hearing that the claimant's performance was improving after the claimant had been placed upon a performance improvement plan. Ms. Snider also testified that she performed her duties to the best of her ability and did not believe that her job was in jeopardy, as she had been told on a number of occasions by her supervisor that there had been substantial improvement in her work.

The employer, on the other hand, has chosen to rely primarily on hearsay evidence in support of its position that Ms. Snider's discharge should be considered disqualifying. It was the facility's executive director's belief that Ms. Snider's improvement had not been substantial and that her discharge was justified. While hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony, providing that the direct testimony is credible and not inherently improbable.

For the reasons stated herein, the administrative law judge concludes that although Ms. Snider was adhering to the employer's performance improvement plan and improving her performance, a decision was made to terminate the claimant because the employer made a management decision to retain another worker who the employer believed had superior skills. The question before the administrative law judge is not whether the employer can discharge an employee for this reason, but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Ms. Snider may have been a sound decision from a management viewpoint, intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated August 15, 2012, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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