

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SENALEE L SING

Claimant

APPEAL NO. 11A-UI-11588-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER

Employer

OC: 09/26/10

Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 29, 2011, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on September 27, 2011. Claimant Senalee Sing did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Rick Barrett represented the employer and presented testimony through Cynthia Emery.

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: Senalee Sing was employed by Broadlawns Medical Center as a full-time residential treatment worker/certified medicine aide from December 2010 until August 8, 2011, when Cynthia Emery, residential coordinator, discharged her from the employment. Ms. Emery was Ms. Sing's immediate supervisor.

The final incident that triggered the discharge occurred on August 5, 2011. During that shift, Ms. Sing documented that she had disbursed nine medications to two different residents when she had not in fact disbursed the medications. Some of the medications were to be disbursed at 6:00 p.m. and some were to be disbursed at 9:00 a.m. On February 27, 2011, Ms. Sing had left the medication cart unlocked after disbursing medications. Ms. Sing knew the cart was to be locked and Ms. Sing possessed a key to lock the cart. On March 31, 2011, Ms. Sing left work without completing her duties. Ms. Sing left supplies sitting in a common area, left charting incomplete, and left resident rooms uncleaned. The employer issued a reprimand in connection with this incident. The employer issued a performance review and reprimand in June. At that time, the employer cited Ms. Sing's failure to complete work and told Ms. Sing that any further similar incidents could result in her discharge from the employment.

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 evidence in the record establishes negligence in connection with the final drug disbursement and charting incident that prompted the discharge. Ms. Sing violated drug disbursement protocol by charting that she had given medications before they were actually disbursed and then failed to disburse the medication. She did this for multiple medications twice during the same day. The evidence establishes negligence in February, when Ms. Sing failed to lock the medication cart and left it accessible to other staff or residents. The evidence establishes negligence when Ms. Sing failed to perform multiple duties in connection with a shift at the end of March. Prior to the final incident that triggered the discharge, Ms. Sing had been reprimanded twice for failure to properly perform her duties and had been warned she faced possible discharge. The evidence establishes a pattern of negligence indicating a willful disregard of the standard of conduct the employer reasonably expected from Ms. Sing.

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

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's August 29, 2011, reference 02, decision is reversed. 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.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw