

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA K HINZMANN**  
Claimant

**APPEAL NO. 07A-UI-10323-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STONEHILL CARE CENTER  
STONEHILL FRANCISCAN SERVICES**  
Employer

**OC: 10/07/07 R: 04  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Linda Hinzmann filed a timely appeal from the October 31, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 27, 2007. Ms. Hinzmann participated. Cris Kirch, Human Resources Director, represented the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Linda Hinzmann, R.N., was employed by Stonehill Care Center as a full-time registered nurse/charge nurse from June 1, 2005 until September 26, 2007, when Human Resources Director Cris Kirsch and Director of Nursing Jane Wills discharged her. The final incidents that prompted the discharge occurred on September 20 and 24, 2007. On September 20, Ms. Hinzmann forgot to give three patients their medications. Ms. Hinzmann was personally responsible for disbursing the medication to the residents. There were five medications that Ms. Hinzmann failed to disburse and these included a medication for Alzheimer's Disease, a medication for Parkinson's or other body function disorders, a medication for macular degeneration, and an antipsychotic medication. The failure to disburse the medications occurred in the context of a busy shift when Ms. Hinzmann bore primary responsibility for providing care to 60 patients. A medication aide specifically asked Ms. Hinzmann whether Ms. Hinzmann, as charge nurse, wanted the aide to stay later than scheduled and assist with passing medications. Ms. Hinzmann declined the offer of assistance and instructed the aide to leave at the end of aide's scheduled shift. The employer had an established protocol for confirming that all appropriate medications had been disbursed during a shift. Each medication for each resident was kept on a separate "distribution card" in a central location. The distribution card contained a one month supply of the medication in individual cellophane bubbles. To disburse the medication, Ms. Hinzmann had to punch the pill out of the cellophane bubble on the distribution card. To confirm that all pills had been distributed, Ms. Hinzmann needed to review the distribution cards to make certain all pills

had been punched of the appropriate cellophane bubbles. Ms. Hinzmann did not review the medication distribution cards before she left at the end of her shift.

On September 21, Barbara Freiberger, L.P.N., discovered the medication errors and reported them to the house supervisor on duty, Sharon Pickle, R.N. Ms. Freiberger also photocopied the distribution cards to record that the doses in question were still on the distribution cards and had not been disbursed to the residents. Ms. Pickle deferred further action on the matter to the regular house supervisor, Mindy Roberts, R.N. Nurse Roberts was Ms. Hinzmann's immediate supervisor.

Ms. Hinzmann did not realize she had failed to pass the medications to the three residents until during her shift on September 23. The employer's established protocol required Ms. Hinzmann to report her error by completing a medication error form. Ms. Hinzmann knew the requirement and knowingly failed to complete the medication error form(s). To make matters worse, Ms. Hinzmann destroyed the missed doses of medication to conceal her failure to disburse the medications.

On September 24, house supervisor, Mindy Roberts, R.N., learned of Ms. Hinzmann's conduct on September 20 and 23. On September 25, Ms. Roberts reported the matter to Director of Nursing Jane Wills and Human Resources Director Cris Kirsch. On September 26, Ms. Kirsch telephoned Ms. Hinzmann. During that conversation, Ms. Hinzmann admitted to destroying the missed medication doses. Ms. Hinzmann then asked whether she was fired and Ms. Kirsch indicated she was.

Ms. Hinzmann admits that she behaved in a dishonest manner by destroying the pills in an attempt to conceal the medication errors.

#### **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 greater weight of the evidence establishes misconduct in connection with the employment that disqualifies Ms. Hinzmann for unemployment insurance benefits. The evidence establishes that Ms. Hinzmann was negligent in performing her charge nurse duties on September 20. Ms. Hinzmann was negligent in failing to disburse the medications, by sending the medication aide home when she clearly needed the assistance, by not summoning assistance so that she could effectively provide care to the residents in her care, and by failing to follow established protocol to confirm that she disbursed all appropriate medications before leaving at the end of her shift. However, the negligence conduct on September 20 did not, in and of itself, demonstrate willful or wanton disregard of the interests of the employer and would not establish misconduct that would disqualify Ms. Hinzmann for benefits. The conduct on September 23 is a different matter. The evidence establishes Ms. Hinzmann knowingly and intentionally destroyed prescribed medications, some of them for serious medical conditions, to conceal her medication errors from the employer. Ms. Hinzmann knowingly failed to complete the required medication report(s) in an attempt to conceal her medication errors from the employer. Ms. Hinzmann's concern about being reprimanded for the medication errors neither excuses the conduct or mitigates the seriousness of the conduct. The September 23 conduct demonstrated willful and wanton disregard of the interests of the employer and the interests of the residents in Ms. Hinzmann's care.

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

**DECISION:**

The Agency representative's October 31, 2007, reference 01, decision is affirmed. 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. The employer's account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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