IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RHONDA K WHEATLEY
Claimant

WEST POINT CARE CENTER INC
Employer

APPEAL NO. 14A-UI-01976-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/26/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Rhonda Wheatley filed a timely appeal from the February 12, 2014, reference 01, decision that disqualified her for unemployment insurance benefits. After due notice was issued, a hearing was held on March 13, 2014. Ms. Wheatley participated. Monte Priski represented the employer and presented additional testimony through Wendy Caviness.

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: West Point Care Center is a skilled nursing and intermediate care long-term care facility. Rhonda Wheatley was employed by West Point Care Center as a full-time licensed practical nurse from 2008 until January 22, 2014, when the employer discharged her for alleged negligence and violation of resident admission protocol. Ms. Wheatley's duties in that position included passing medications to residents, assessing residents' health status, assisting with resident admissions, and supervising certified nursing assistants. Wendy Caviness became the director of nursing on November 27, 2013 and became Ms. Wheatley's supervisor at that time.

The sole incident that factored in the discharge occurred on January 17, 2014, when Ms. Wheatley was assisting Ms. Caviness with a resident admit. Ms. Caviness assigned to Ms. Wheatley the responsibility of making certain that the resident had appropriate medications. The resident's family had brought with them a number of medications. The resident's prescribed medications included an instant-relief morphine and an extended-relief morphine. As part of the admission process, the nursing staff at West Point Care would prepare a medication order for the resident's physician to sign. The medication order listed each medication with the appropriate dosage information. Ms. Caviness had prepared such an order to be used in connection with the January 17 admit.

Ms. Caviness assigned to Ms. Wheatley the responsibility of reviewing each of the medications the family brought with them to determine whether those medications matched the current physician order. Ms. Wheatley was to send home with the family any medication that did not match the current physician order. Ms. Wheatley was to interact with the pharmacy to secure any medications necessary to comply with the current physician order. Ms. Wheatley noted that the extended-relief morphine that the family brought was a 15 mg. dose, whereas the current physician's order called for a 30 mg. dose. Ms. Wheatley took appropriate steps to obtain the 30 mg. dose from the pharmacy. Ms. Wheatley noted that instant-relief morphine the family brought was 15 mg. and that the current order called for a 15 mg. dose, but on a different schedule for administering the medication. The medication that the family brought called for one to two tablets every two to four hours as needed. The current physician's order called for one tablet every two hours. Rather than request a new prescription with the correct time for administering the medication from the pharmacy, Ms. Wheatley concluded she could simply put an additional label on the bottle the family had brought. The additional label would direct the nursing staff to review the Medication Administration Record (MAR) before administering the medication to get the correct dosing information. The employer had the labels on hand for such purposes. The employer subsequently faulted Ms. Wheatley for not sending the instant-relief medication home with the family and for advising the pharmacy that there was no need for an additional instant-relief morphine.

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 that Ms. Wheatley, at worst, made a good faith error in judgment when she decided not to order a new prescription of the instant-relief morphine. The evidence indicates that the family had brought instant-relief morphine pills in the correct milligram amount. The evidence indicates that the employer's nursing staff was aware of the current medication administration schedule pursuant to the physician's order and the MAR. While the employer may have preferred that Ms. Wheatley order the new prescription, the weight of the evidence indicates that Ms. Wheatley took reasonable and appropriate steps by placing the additional label on the instant-relief medication the family had brought so that the nursing staff would be directed to the MAR or the current physician's order before administering the medication. The weight of the evidence fails to support Mr. Priski's assertion that the labeling situation resulted in delay in managing the resident's pain.

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

DECISION:

The Claims Deputy February 12, 2014, reference 01, decision is reversed. 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

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