

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROGENE R GUNTHER**  
Claimant

**APPEAL NO. 11A-UI-10580-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 07/17/11**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Rogene Gunther filed a timely appeal from the August 5, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 2, 2011. Ms. Gunther participated. David Williams of TALX represented the employer and presented testimony through Tammy Kappel and Christy Harris. Exhibits One through Six were received into evidence.

**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: Rogene Gunther, R.N., was employed by Ravenwood Rehab Center as a full-time charge nurse from 2008 until July 15, 2011, when Tammy Kappel, R.N., Director of Nursing, and Christy Harris, R.N., Director of Nursing discharged her from the employment. Ms. Harris was Ms. Gunther's immediate supervisor during the final four months of the employment.

The final incidents that triggered the discharge occurred during the period of July 11-14. On July 11 and again on July 13, Ms. Gunther gave a patient the wrong dosage of an antibiotic. Instead of giving the patient the 280 mg. dose ordered by the physician, Ms. Gunther erroneously gave the patient a 250 mg. dose. Ms. Gunther knew of but failed to follow the required steps to ensure she was delivering the correct medication to the patient. In a separate incident on July 13, Ms. Gunther made an error when she transferred information concerning a medication dose from one medical document to another. Instead of correctly stating that the a Coumadin dose was to continue at 2.5 mg., Ms. Gunther misstated the dose as 2.0 mg. On July 14, Ms. Gunther could not locate the correct formula for a patient's tube feeding, though it was available in the facility. Instead, Ms. Gunther decided to do the tube feeding with a different formula with a lower calorie content. Ms. Gunther knew of but failed to follow the required step of notifying the physician that she had deviated from the formula ordered by the physician.

In making the decision to end Ms. Gunther's employment, the employer considered a reprimand issued on May 12, 2011 for alleged medication errors. The employer cannot recall what the errors were. Mr. Gunther believes the reprimand concerns a change in the employer's policy and her act of transcribing orders relayed by a hospital nurse onto admissions forms, rather than on the phone order form the employer now wanted her to use. Prior to the reprimand, Ms. Gunther was unaware that she was transcribing the information onto the wrong form.

In making the decision to discharge Ms. Gunther from the employment, the employer considered a reprimand issued to Ms. Gunther on April 21, 2011 for failing to ensure that a daily weight measurement for taken or a particular patient whose weight needed to be monitored. Ms. Gunther was responsible as charge nurse for making certain that the nursing assistants took the weight during the shift, but failed to ensure this happened on April 12, 16, 17 and 20.

In making the decision to discharge Ms. Gunther from the employment, the employer considered Ms. Gunther's failure to appropriately respond to a situation where a patient had pulled out his peripherally inserted central catheter (PICC line). When it was placed on the patient, the catheter had been inserted at the patient's elbow and fed up to the patient's heart. The fact that the patient had removed the PICC line was medically significant. Ms. Gunther was aware that the patient had removed the PICC line. Ms. Gunther took the patient's vitals, but did nothing beyond that to assess the patient for trauma, to notify the doctor of the incident, or to notify the family of the incident. Ms. Gunther was aware that she was required to do all these things in a timely manner.

In making the decision to discharge Ms. Gunther, the employer considered a reprimand issue to Ms. Gunther in February 2011, but the employer lacks additional information about that incident beyond what is stated on the reprimand.

The employer staffed its facility within regulation requirements.

## **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 a pattern of carelessness and negligence that indicates a willful disregard of the standards the employer reasonably expected of Ms. Gunther. While Ms. Gunther demonized the new employer in her testimony, the evidence indicates instead that Ms. Gunther simply failed to perform her nursing duties in an acceptable manner on several occasions during the final months of the employment. Ms. Gunther's negligence could have had a devastating impact on patients in her care and exposed the employer to liability in connection with her carelessness and negligence.

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

#### **DECISION:**

The Agency representative's August 5, 2011, 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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