

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BELLON, SONYA, R
Claimant

APPEAL NO. 13A-UI-01900-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUALITY HOME CARE PROFESSIONALS I
Employer

OC: 01/06/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Sonya Bellon filed a timely appeal from the February 7, 2013, reference 01, decision that denied benefits based on an agency conclusion that she was discharged for misconduct. After due notice was issued, a hearing was commenced on March 14, 2013 and concluded on March 15, 2013. Ms. Bellon participated. Amber Carter represented the employer and presented additional testimony through Lisa Kendrick, Mary Jo Nostsger and Donna Parker. Exhibits One through Twelve and Fourteen 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: The employer is a home healthcare agency. Sonya Bellon, R.N., was employed by Quality Home Care Professionals, Inc., as a full-time staff nurse from August 2011 until December 26, 2012, when the employer discharged her from the employment. Ms. Bellon's duties involved providing nursing services to clients in their homes and supervising one licensed practical nurse and six or seven nursing assistants/home healthcare aides. Ms. Bellon obtained her licensure as a registered nurse in 2010 and her licensure as a licensed practical nurse the year before that. Ms. Bellon's immediate supervisor was Lisa Kendrick, R.N., Director of Nursing. Ms. Kendrick, and Amber Carter, Administrator, discharged Ms. Bellon from the employment.

The final incident that triggered the discharge occurred on December 25, 2012 and came to the employer's attention the next day. On December 26, Sonya Test, R.N., provided in-home wound care services to a client for whom Ms. Bellon had provided in-home wound care services on December 25. The client had a lower abdominal wound that was a few centimeters deep and 2 to 3 cm. in diameter. The client's wound had to be packed daily with sterile gauze. The process would take 10 to 20 minutes if performed properly. On December 26, the client complained to Ms. Test that Ms. Bellon had only been in her home for 10 minutes on December 25, had failed to wash her hands before providing wound care, had failed to wear

gloves while she was providing wound care, had been rough with the client while performing the wound care, and had not performed any sort of assessment on the client. The client requested that Ms. Bellon not return to her home.

After Ms. Test brought the client's complaint to the attention of Ms. Kendrick on December 26, Ms. Kendrick immediately commenced her investigation into the complaint. Ms. Kendrick went the same day to the client's home and spoke with the client. The client repeated the same concerns she had mentioned to Ms. Test and again requested that Ms. Bellon not return to perform any additional nursing services. Ms. Bellon had previously provided wound care services to the same client on multiple occasions and the client had not previously complained about Ms. Bellon. Ms. Kendrick reviewed Ms. Bellon's documentation concerning the care she had provided to the client. Ms. Bellon had documented that she spent 30 minutes in the client's home. Ms. Bellon had documented that she had performed a full assessment on the client. Ms. Bellon had documented that she had listened to the client's bowel sounds. Ms. Bellon documented that she had listened to the client's lungs and documented that the lungs were clear. Ms. Kendrick then spoke to Ms. Bellon. Ms. Bellon said that none of the client's allegations were true. Ms. Bellon asserted she had been at the client's home for the 30 minutes she had documented, that she had washed her hands, and that she had worn gloves. When Ms. Kendrick asked Ms. Bellon whether Ms. Bellon had performed an assessment on the client, Ms. Bellon said she had asked the client if the client had coughed or had pain and had asked the client if the client's bowels had moved. Ms. Kendrick pointed out to Ms. Bellon Ms. Bellon's documentation of a full assessment and the discrepancy between what Ms. Bellon had documented and what Ms. Bellon was describing to Ms. Kendrick. Ms. Kendrick concluded that the client's complaint was credible and that Ms. Bellon had falsified the documentation concerning the time she spent at the client's home and the services she provided.

At the same time Ms. Kendrick spoke to Ms. Bellon on December 26 about the above client, Ms. Kendrick spoke to Ms. Bellon about medication management services Ms. Bellon had provided to another client on December 24, 2012. That matter, too, came to the employer's attention after Ms. Test went to the client's home to provide services after Ms. Bellon had been the client's home. Ms. Bellon had erred in setting up the client's medication box. Ms. Bellon had put the client's morning medications in the afternoon medication slots and had put the client's afternoon medications in the morning medication slots. Ms. Bellon denied any errors in setting up the client's medication. Neither the client nor the client's family had tampered with the medications as set up by Ms. Bellon. The client had been a client of Quality Home Care Professionals for ten years and there had been no prior similar issues with the medication box.

In making the decision to end Ms. Bellon's employment, the employer considered prior matters. On December 7, 2012, Ms. Kendrick learned that Ms. Bellon had been documenting bogus glucose levels for a diabetic client, FA. On that day, Ms. Kendrick went to a client's home to provide nursing services. Ms. Kendrick asked the client what her blood glucose level was. The client did not know, but knew that her blood glucose level was elevated. The client had a glucometer in her home that she used to measure her blood glucose levels. Ms. Kendrick checked the glucometer and documented several separate readings recorded on that machine. When Ms. Kendrick reviewed the medical charting Ms. Bellon had prepared in connection with Ms. Bellon's prior visits with the client, none of the documentation Ms. Bellon had charted matched the readings from the glucometer. Ms. Kendrick also noted that Ms. Bellon had erroneously included mental assessment information in an area of the chart that concerned neurological assessment.

In making the decision to discharge Ms. Bellon from the employment, the employer considered other charting issues that came to the employer's attention in early December 2012. For one

client, RW, Ms. Bellon had failed to transcribe, or bring forward, all appropriate information in connection with recertifying the client for nursing services. The employer had a recertification checklist that Ms. Bellon was supposed to use, but which she did not use. Ms. Bellon had failed to complete an advanced beneficiary notice for the client.

In making the decision to discharge Ms. Bellon from the employment, the employer considered Ms. Bellon's failure to timely obtain a doctor's order regarding client FA's change in vesicare medication dose. A doctor had provided FA with an unsigned Post-It Note indicating that FA's medication dose should be cut in half. As part of Ms. Bellon's duties, she was to follow up with the doctor in a timely manner to obtain a formal order to change the medication dose. While the patient got the correct reduced dosage of the medication, two weeks after the appearance of the Post-It Note, Ms. Bellon had not yet obtained an order to document the change in medication.

In making the decision to discharge Ms. Bellon from the employment, Ms. Kendrick considered information Ms. Bellon had forwarded to colleagues in December about FA's medication management. Ms. Bellon was responsible for setting up client FA's medication box for a week at a time. On a day in December when Ms. Bellon needed to be absent, she told the employer that a scheduled visit to FA could be pushed back a day because FA had sufficient medication set up. The medication in FA's medication box had in fact run out. Ms. Kendrick also determined that Ms. Bellon had not documented anything on the FA's medication charting sheets for several weeks, though the medication sheets were to be updated on a regular basis.

In making the decision to discharge Ms. Bellon from the employment, the employer considered Ms. Bellon's erroneous documentation that diabetic client FA's weight had been stable for multiple weeks when it had not been stable. FA gained 14 pounds between October 23 and November 26. On October 23, Ms. Bellon documented a weight of 186 pounds. For the next weeks, Ms. Bellon documented the weight as stable without recording an actual weight. On November 26, Ms. Bellon documented a weight of 200 pounds. Per nursing protocol, Ms. Bellon would be expected to notify the client's doctor if FA had a two-pound change in weight. An increase in FA's weight would increase FA's risk of congestive heart failure.

In making the decision to discharge Ms. Bellon from the employment, Ms. Kendrick considered charting deficiencies that came to light on October 2012. On October 3, Ms. Bellon had charted in one area of a client's chart that the client had refused to allow Ms. Bellon to assess vital signs. However, in another area of the charting for the same visit, Ms. Bellon had charted the vital signs. For the same client, Ms. Bellon had charted a somewhat meaningless blood glucose *range* of 100 to 200 based only on a client's statement of the blood sugar range and without any actual measurement of the blood glucose level.

The employer had met with Ms. Bellon to discuss prior charting and performance deficiencies.

While the employer considered Ms. Bellon's 39 absences in making the decision to discharge, all but a few of those absences were due to illness properly reported to the employer. Ms. Bellon had been absent due to winter conditions on December 20 and 21. Ms. Bellon had been absent for part of June 27 because she had allowed her license to expire and had to renew it. Ms. Bellon had been absent for personal reasons on March 28, 2013.

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 weight of the evidence in the record establishes, at minimum, a pattern of careless and/or negligence indicating a willful deviation from the standards of conduct the employer reasonably

expected of Ms. Bellon. That pattern is outlined in the findings of fact. The weight of the evidence supports the allegation and conclusion that Ms. Bellon did indeed falsely document the time she spent with the client on Christmas Day, falsely documented having performed an assessment when she had not, and that she otherwise cut corners in providing nursing services to the client. The administrative law judge considered Ms. Bellon's testimony regarding the circumstances in the client's home on Christmas day, but did not find in that testimony reason to discount the client's assertion, and the employer's conclusion, that Ms. Bellon rushed through the visit and then falsely overstated the time she spent in the client's home. The administrative law judge notes that this same client had not previously complained about Ms. Bellon and that the client provided the same information to two nurses as part of two separate conversations the day after Ms. Bellon's Christmas Day visit. That incident followed several other instances when Ms. Bellon had engaged in false and/or substandard charting or otherwise failed to appropriately follow up regarding the needs of the clients in her care. The final incident alone, and the pattern taken as a whole, is sufficient to establish misconduct in connection with the employment. Accordingly, Ms. Bellon 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.

DECISION:

The Agency representative's February 7, 2013, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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