

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COURTNEY A SMITH
Claimant

APPEAL NO. 10A-UI-09492-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 05/30/10
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 24, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 20, 2010. Claimant Courtney Smith participated. Jeff Wollum, Administrator, represented the employer. Exhibits One, Two and A through E 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: Courtney Smith, R.N., was employed by HCM, Inc., at Cedar Falls Care Center as a full-time nurse from August 2009 until June 1, 2010, when Maggie Austin, Director of Nursing, and Jeff Wollum, Administrator, discharged her from the employment. Ms. Austin was Ms. Smith's immediate supervisor.

The final incident that prompted the discharge occurred on June 1, 2010. On that date, as Ms. Smith was entering a resident's room to provide nursing cares, she initialed that she had provided the cares under the belief that she would indeed be immediately providing the cares. The resident then refused the cares and continued to refuse the cares throughout the day. The resident had the right to refuse the cares and Ms. Smith honored that right. Ms. Smith notified the resident's doctor of the resident's refusal of cares. Before the end of her shift, Ms. Smith notified the on-coming nurse of the resident's refusal of cares. Ms. Smith forgot to go back and correct the treatment record to indicate that she did not in fact provide the cares. This was an oversight on the part of Ms. Smith, not an attempt to falsify a medical record. Ms. Smith provided all other appropriate cares to all other residents in her care that day and charted the same.

On Friday, May 28, 2010, Ms. Smith and four other employees had gone to Administrator Jeff Wollum as a group to complain about Director of Nursing Maggie Austin's disrespectful,

demeaning and profane outburst at the nurses' station earlier that day. As the group left Mr. Wollum's office, they encountered D.O.N. Austin and the Assistant Director of Nursing. D.O.N. Austin asked what the group had been speaking to Mr. Wollum about and Ms. Smith made a vague reference to issues the group had been having, but declined to say more. While D.O.N. Austin stormed off, she told the Assistant D.O.N. that they had to "go get it figured out." Ms. Smith had gone to Mr. Wollum early in her employment with concerns about D.O.N. Austin. After that contact, D.O.N. Austin had summoned Ms. Smith to a meeting and forbade Ms. Smith to go to Mr. Wollum with any concerns she had about Ms. Austin or the Assistant D.O.N.

After Ms. Smith complained to Mr. Wollum on Friday, May 28, she worked the following Saturday and Sunday without incident. Ms. Smith worked her last shift on June 1, 2010. This was the first shift Ms. Smith worked with D.O.N. Austin after her complaint to Mr. Wollum on May 28. It was shortly after the end of this shift, that D.O.N. Austin summoned Ms. Smith back to the workplace and discharged her from the employment. Ms. Austin and Mr. Wollum had decided to discharge Ms. Smith before Ms. Austin spoke with Ms. Smith. In joining in the decision to discharge Ms. Smith, Mr. Wollum relied upon Ms. Austin's representations regarding cares Ms. Smith had documented, but allegedly not provided.

Within a couple weeks of Ms. Smith's discharge from the employment, D.O.N. Austin had issued a written reprimand to Ms. Smith for allegedly using the wrong wound covering bandage on a resident's wound. D.O.N. Austin concluded Ms. Smith had changed provided cares that deviated from the physician's order, when it was D.O.N. Austin who erroneously documented the physician's order regarding the wound covering. In other words, the reprimand proved to be without merit. The employer submitted the final reprimand and the earlier reprimand as exhibits for the hearing.

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 indicates that Ms. Smith erred in initialing that she had provided a resident's care before she had actually provided the care. Ms. Smith further erred when she forgot to correct that documentation before the end of her workday. Ms. Smith did take other steps to make certain that the staff and the resident's doctor were aware that the resident had refused cares that day. While Ms. Smith's oversight suggests a degree of carelessness, the evidence fails to establish any intent to falsify records and fails to establish anything that rises to the level of negligence. The weight of the evidence indicates it was also an isolated incident. The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish any additional carelessness, negligence or misconduct. The weight of the evidence suggests that Ms. Smith performed her work to the best of her ability and that D.O.N. Austin was motivated by matters other than Ms. Smith's actual work performance when she alleged to Mr. Wollum that Ms. Smith had falsified medical records or failed to perform cares for other residents.

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

DECISION:

The Agency representative's June 24, 2010, reference 01, decision is affirmed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css