

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MARNA C COGLEYFOX
Claimant

APPEAL NO. 18A-UI-09311-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEYLIFE
Employer

OC: 08/12/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Marna CogleyFox filed a timely appeal from the August 27, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. CogleyFox was discharged on August 13, 2018 for misconduct in connection with the employment. After due notice was issued, a hearing was started on September 25, 2018 and completed on September 26, 2018. Ms. CogleyFox participated. Edward Wright of Equifax represented the employer and presented testimony through Michelle Estes, Cynthia Cupples, and Nicole Meyer.

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 claimant was employed as a full-time registered nurse and charge nurse at Parks Center in Newton from 2016 until August 13, 2018, when the employer discharged her in response to a pattern of negligent performance of her nursing duties. The final conduct that triggered the discharge occurred on August 4 and 5, 2018. On those dates, the claimant failed to change the bandage covering an elderly resident's wound. The resident's care plan required that the bandaged be changed daily. The claimant neglected to change the bandage during her shifts on August 4 and 5. The neglect of the resident's wound was detected by the nurse who cared for the resident on August 6. That nurse noted the bandage, marked with the date of August 3, 2018, and changed the resident's bandage. The employer was still in the process of investigating the August 4 and 5 concerns at the time the employer met with the claimant on August 6 to issue written discipline to the claimant in connection with multiple medication errors attributable to the claimant. As the employer was investigating the August 4 and 5 issues, the employer became aware that the claimant had received physicians orders during her shifts on August 4 and 5 that the claimant had failed to process as required and that the claimant had placed in a folder where they were later discovered.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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 discharge for misconduct in connection with the employment. The weight of the evidence establishes that the claimant was discharged on August 13, 2018 in response to a pattern of negligent performance of her nursing duties. The negligence involved represented deviations from standard nursing practices that the claimant would have been aware of as a result of her nursing training and her history in the employment. The pattern of conduct demonstrated an intentional and substantial disregard of the employer's interests and of the interests of the residents in the claimant's care. The claimant's testimony was most notable for the several ways she attempted to shift responsibility from herself for matters within her duties. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The August 27, 2018, reference 01, decision is affirmed. The claimant was discharged on August 13, 2018 for misconduct in connection with the employment. 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 amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs