

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHINA R FORD
Claimant

APPEAL NO. 12A-UI-00812-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRIENDSHIP MANOR
Employer

OC: 12/11/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

China Ford filed a timely appeal from the January 20, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 17, 2012. Ms. Ford participated. Lori Warner represented the employer and presented additional testimony through Patti McKean and Gretchen Carruthers.

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 operates a long-term care facility in Rock Island, Illinois. China Ford was employed by Friendship Manor as a full-time certified nursing assistant from March 2011 until December 5, 2011, when Director of Nursing Lori Warner and Human Resources Director Gretchen Carruthers discharged her from the employment.

The final incident that triggered the discharge occurred on December 1. On that day, Assistant Director of Nursing Patti McKean assigned Ms. Ford to care for an elderly, medically fragile resident one-on-one. During the shift, Ms. Ford and two other employees took an hour and a half lunch break. They went to a bar and grill in uniform. Ms. Ford did not clock out and did not clock back in. Ms. Ford was allowed to take an unpaid 30-minute lunch break and was required to clock out and clock back in. Ms. Ford left the elderly, medically fragile resident in the care of another CNA who had other duties to attend to. Ms. Ford knew that the other CNA had other duties and would not be able to care for the resident one-on-one as Ms. Ford had been instructed to do. When Ms. Ford and two other CNAs arrived back at the workplace, the CNAs who had been left behind to pick up the slack were upset, as was the charge nurse. Though the charge nurse was off work the next day, he contacted D.O.N. Warner the next day to complain about the conduct. Ms. Warner notified Ms. Ford that she was suspended while the employer investigated. Ms. Warner spoke to the other two CNA's who had taken the extended lunch break with Ms. Ford and both admitted to the conduct. When Ms. Warner interviewed Ms. Ford

on December 5, she also admitted to the conduct. Based on this incident and prior incidents, the employer notified Ms. Ford later in the day that she was discharged from the employment.

Ms. Ford came to the employment already a certified nursing assistant. Within her first week of the employment, Ms. Ford was already deviating from established policy. On March 12, Ms. Ford and another CNA attempted an unsafe transfer of a resident and the resident fell to the floor.

On September 8, Ms. Ford and others violated the employer's prohibition against horseplay and cell phone use by posing for a picture taken by another staff member. The picture was then posted on someone's Facebook page.

On November 22, Ms. Ford parked in a parking area restricted for visitors, most of whom were elderly. Ms. Ford took her break at an unauthorized time, during the residents' dinner time. Ms. Ford left the workplace without authorization. Ms. Ford failed to clock out for the break.

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).

The final incident and the prior incidents are sufficient to indicate a willful disregard of the employer's interests and an intentional deviation from the standards of conduct the employer reasonably expected. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Ford was discharged for misconduct. Accordingly, Ms. Ford 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. Ford.

DECISION:

The Agency representative's January 20, 2012, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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