

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

POLLY A HERBST
Claimant

APPEAL NO. 12A-UI-05260-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRI-STATE VEIN CENTER, P.C.
Employer

OC: 04/08/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated May 1, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on May 30, 2012. Claimant participated. The employer participated by Dr. Joseph Jenkins, Owner/President, and Ms. Amy Richard, Business Manager. Claimant's Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Polly Herbst was employed by Tri-State Vein Center, P.C., from December 13, 2010 until April 9, 2012 when she was discharged from employment. Ms. Herbst was employed as a full-time receptionist and was paid by the hour. Her immediate supervisor was Dr. Joseph Jenkins, the office owner.

Ms. Herbst was discharged on Monday, April 9, 2012 for leaving work on the afternoon of Friday, April 6, 2012 without authorization.

Ms. Herbst had inquired earlier in the week whether the office would remain open throughout the afternoon of Good Friday, April 6, 2012 and had been told it depended upon whether any patients were scheduled for that afternoon. On Friday, April 6, 2012, Ms. Herbst again inquired about the office closing early that afternoon and the claimant had been specifically told by Dr. Jenkins that there was still a patient in the office and that patient was being seen. Subsequently, Dr. Jenkins went to attend to other matters and although the claimant had been told that there was still a patient in the office, Ms. Herbst began to punch out and leave. At that time the claimant was specifically told by the office business manager, Amy Richard that she could not leave or punch out because there was still a patient being seen in the office.

Ms. Herbst nonetheless punched out and left between 1:30 and 2:00 p.m. that day. The claimant left although she was aware that Ms. Richard had previously received authorization to be off that afternoon and the only additional employee in the office would be a certified nursing assistant.

It is the claimant's position that she believed sufficient coverage was available in the office and that she had informed a certified nursing assistant that she was leaving early that afternoon.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 insurance benefits. 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. of Appeals 1992).

The evidence in this matter establishes that Ms. Herbst had left work without authorization on the afternoon of April 6, 2012 in violation of company policy and of specific directives that had

been given to her by the company office owner, Dr. Jenkins, and the office business manager, Amy Richard. Claimant had utilized four hours of time available to her early that week and had been specifically told that the office would not close early on the afternoon of April 6, 2012 if patients were being seen. Although the claimant was aware that a patient was being seen and specifically told that she should not punch out or leave, claimant nevertheless did so leaving the office without sufficient coverage and causing her discharge from employment.

The administrative law judge concludes based upon the evidence in the record that the claimant's conduct showed a willful disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated May 1, 2012, reference 01, is affirmed. Claimant is disqualified until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs