

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA M OCHOA**  
Claimant

**APPEAL NO. 07A-UI-06084-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL**  
Employer

**OC: 05/20/07 R: 02  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 13, 2007, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 3, 2007. Claimant participated. Employer participated through Eddie Brown and Susan Fagg.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time rehabilitation aide from July 18, 2005 until May 11, 2007, when she was discharged. On May 10 Fagg observed her to be furious after having verbal altercations with other employees. Fagg believed her to be “out of control,” so she sent her home; and on her way out, claimant threw the door open so hard she hit a therapist with the door and knocked him into a patient. Claimant received the official termination letter on May 21, 2007. On May 9 she was on the phone with a therapist who asked her to bring a patient to the gym. In front of a patient, she threw her pen and Kleenex box and said, “I have to do everything.” On another recent occasion, she was overheard saying that she hated her job and if Fagg were on the floor dying she would not spit on her to hydrate her. She also made snide remarks to employees in front of others about how they were doing their job.

On July 24, 2006, Fagg gave her a verbal warning for inappropriate communication after Fagg heard her from a distance complaining in the hallway about nurses while patients and families were within hearing distance. On September 22, 2006, employer issued a written warning for inappropriate communication, inappropriate behavior, and insubordination after an incident with three other staff members in a patient room when she made snide comments to the staff member in the room, which was overheard by another staff member in the hall. When confronted, she became agitated and “stormed” out, accusing another employee of lying about the incident. In October 2006 employer mandated that she go to employee assistance for anger issues and on another occasion sent her there about grief counseling because of her mother’s

death before she started work there. In February 2007 claimant took a leave of absence under the Family Medical Leave Act (FMLA) and Fagg noted upon her return it was apparent because of her continued anger issues, that the leave had not done any good.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Employer has a reasonable interest in preserving at least a minimally cordial work environment for its employees and a quiet, peaceful atmosphere for its patients. Claimant's repeated breach

of each of these interests, after having been repeatedly warned, is evidence of her willful intent to continue exhibiting that type of behavior and is misconduct. The separation is considered a current act, since it was clear that claimant was sent home for disciplinary reasons on May 10, even though she did not get the official termination notice until May 21, 2007. Benefits are denied.

**DECISION:**

The June 13, 2007, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw