

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARLENE HJULER**  
Claimant

**APPEAL NO. 13A-UI-04914-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FRIENDSHIP HOME ASSN**  
Employer

**OC: 04/07/13  
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the decision of a representative dated April 24, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, this case came on for hearing by telephone conference call on May 31, 2013. The claimant participated personally. The employer participated by Karol Damman, the director of nursing, and Jenny Fox, the business office manager. The record consists of the testimony of Darlene Hjuler; the testimony of Karol Damman; and testimony of Jenny Fox.

**ISSUE:**

Whether the claimant was separated from her employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a long-term care facility. The claimant was hired on November 4, 1998. She first worked as a certified nursing assistant and then as a certified medication aide. The date of the final separation of employment was April 3, 2013.

The incident that began the sequence of events in this case occurred on March 6, 2013. The claimant was placed on suspension after she failed to call the nurse a second time on a patient who had symptoms of vomiting and diarrhea. The claimant had been instructed by the nurse who did the first assessment to take the patient's vitals but she felt that this was beyond her scope of practice. She did keep an eye on the patient and reported the matter to the day nurse when she came on duty. The patient was taken to the hospital.

When the director of nursing found out about the incident, she suspended the claimant and conducted an investigation. The director of nursing concluded that the claimant had been negligent in failing to call the nurse when the patient began vomiting. The decision was made to terminate the claimant on March 12, 2013. The claimant did not want to lose her job and so the

employer offered her a job in the dietary department. The claimant tried the job for a couple of days and could not physically perform the job. She submitted a two week notice on March 20, 2013. The claimant's final day of work and separation of employment was April 3, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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 claimant is eligible for unemployment insurance benefits provided she meets all eligibility requirements. The claimant is not presently eligible because she concedes she is not able and available for work. No disqualification will be imposed because of the separation of employment. The most reasonable inference from the evidence is that the claimant was terminated from her employment. The employer made the decision to terminate the claimant following the incident on March 6, 2013. The claimant had lost her employment as of that date. The employer did offer the claimant another job at the facility and the claimant did try to do the job. She was physically unable to do that job. The administrative law judge accepts the claimant's testimony that she did quit that job but she did not quit her nursing job.

The issue, therefore, is whether the claimant was terminated for misconduct. Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct specifically excludes errors of judgment or discretion in isolated situations. The employer has the burden of proof to show misconduct.

The administrative law judge concludes that there is insufficient evidence in this record to show misconduct that disqualifies the claimant from receiving benefits. The most reasonable inference from the evidence is that the claimant made a poor judgment call by failing to call the nurse a second time concerning a patient with vomiting and diarrhea. The claimant did call the nurse the first time and the nurse made an assessment. The claimant did keep an eye on the patient during the night. She did not call the nurse a second time and waited until the day nurse came on duty. The employer had every right to make a business decision to terminate the claimant. But one instance of poor judgment does not constitute disqualifying misconduct. Benefits are therefore allowed with respect to the separation of employment.

**DECISION:**

The decision of the representative dated April 24, 2013, reference 01, is reversed. The claimant is eligible for unemployment insurance benefits based on the separation of employment. Before the claimant can receive benefits she must meet all other eligibility requirements.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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