

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBI L QUADE
Claimant

APPEAL NO. 09A-UI-07077-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACC ENTERPRISES LLC
CEDAR HEALTH
Employer

OC: 04/12/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 6, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 2, 2009. Claimant Bobbi Quade participated. Michael Blume, Director of Residential Services, represented the employer. Exhibits One, Two and Three were received into evidence.

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: Bobbi Quade was employed by Cedar Health as a full-time Certified Nursing Assistant (C.N.A.) from August 13, 2007 until April 16, 2009, when Darla Spratt, Director of Nursing, discharged her from the employment.

The final incident that prompted the discharge occurred on April 16, 2009. On that day, Ms. Spratt summoned Ms. Quade to a meeting for the purpose of issuing a reprimand for insubordination and for violation of the employer's cell phone policy. Earlier in her shift, Ms. Quade had opened her cell phone to show a coworker an ultrasound photo of her unborn child. Charge Nurse Audrey Boysen, R.N., observed the Ms. Quade accessing her cell phone outside of a break period and directed Ms. Quade to hand over the phone. Ms. Quade did not comply and instead walked away. The employer had a written policy that indicated a supervisor could confiscate a cell phone until the end of the shift if the employee used the cell phone outside of an authorized break.

At the time Ms. Spratt met with Ms. Quade to discuss the cell phone use and insubordinate behavior directed toward the charge nurse, Ms. Spratt did so with raised voice. In addition, Ms. Spratt was waiving her hands in front of Ms. Quade and moving about the room in an agitated manner. Ms. Spratt launched into a tirade about how should could not be at the

workplace at all hours to monitor Ms. Quade's conduct. Ms. Quade thought Ms. Spratt's actions and demeanor were unnecessarily aggressive and demeaning. Ms. Quade decided to leave the meeting. Ms. Quade told Ms. Spratt that she was going to walk away because Ms. Spratt was being rude and sarcastic. Ms. Spratt viewed Ms. Quade's decision to leave the meeting as a further incident of insubordination. As Ms. Quade began to leave the meeting, Ms. Spratt told Ms. Quade that the employer did not need her and that she was fired.

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).

Allegations of misconduct 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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence indicates that Ms. Quade unreasonably refused Charge Nurse Boysen's reasonable directive to hand over the cell phone until the end of her shift. The weight of the evidence indicates that Ms. Quade reasonably advised Ms. Spratt that she was going to absent herself from a meeting at which Ms. Spratt was being unnecessarily hostile. Ms. Quade reasonably removed herself from the meeting to avoid further escalating the interaction. Ms. Spratt unreasonably interpreted Ms. Quade's conduct in leaving the meeting as insubordination.

The weight of the evidence in the record establishes but one incident of Ms. Quade unreasonably refusing a reasonable employer directive. Thus, the evidence fails to establish a continued refusal to follow the employer's reasonable directives and fails to establish misconduct in connection with the employment that would disqualify Ms. Quade for unemployment insurance benefits.

The administrative law judge notes that the employer failed to present testimony from persons with firsthand knowledge of the incidents leading to the discharge. The employer had the ability to present more direct and satisfactory evidence, but did not do so.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Quade was discharged for no disqualifying reason. Accordingly, Ms. Quade is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Quade.

DECISION:

The Agency representative's May 6, 2009, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs