

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MALINDA M THOMPSON
Claimant

APPEAL NO. 09R-UI-07951-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 08/03/08
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated October 2, 2008, reference 01, which denied benefits based upon her separation from Mercy Hospital. After due notice, a telephone conference hearing was scheduled for and held on June 17, 2009. Claimant participated personally. Although duly notified, the employer did not participate. This matter came to hearing based upon a remand from the Employment Appeal Board.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony considered the evidence in the record finds: The claimant was employed as a full-time home health care aide for Mercy Hospital from August 6, 2007 until June 26, 2008, when she was discharged from employment.

The claimant was discharged when the employer believed that she had failed to provide proper notification for her impending absences on Monday, June 23; Tuesday, June 24; and Wednesday, June 25, 2008. Ms. Thompson had called in each day and left a message with her immediate supervisor via telephone message machine, reporting that she would be unable to report for scheduled work each day. Whether the claimant attempted to dispute the basis for her discharge at the time of termination, she was nonetheless discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for intentional misconduct sufficient to warrant a denial of unemployment insurance benefits. It does not.

Here, the evidence in the record establishes that the claimant was discharged when the employer believed that she had not provided proper notification to her employer for three impending absences on June 23, June 24 and June 25, 2008. The claimant participated personally and testified under oath, testifying that she did in fact provide notification to the employer by leaving messages on her immediate supervisor's voicemail each day. Claimant further testified that upon being informed that she was being discharged, she attempted to dispute her discharge, specifically informing the employer that she had in fact called in each of the days in question. Claimant was nonetheless discharged.

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 denial of unemployment insurance 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, 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 the available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

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.

For the reasons stated herein, the administrative law judge concludes that the employer has not sustained its burden of proof in showing intentional disqualifying misconduct. Unemployment insurance benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

Representative's decision dated October 2, 2008, reference 01, is reversed. Claimant was dismissed under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

srs/css