

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERESA G HILLMAN**  
Claimant

**APPEAL NO: 12A-UI-10536-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREAT RIVER MEDICAL CENTER**  
Employer

**OC: 08/05/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Teresa G. Hillman (claimant) appealed a representative's August 23, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Great River Medical Center (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on September 26, 2012. The claimant participated in the hearing. Carrie Nudd appeared on the employer's behalf and presented testimony from two other witnesses, Laura Worlie and Susan Fowler. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on February 25, 1985. She worked full-time as a certified nursing aide (CNA) in the employer's acute care unit. Her last day of work was July 31, 2012. The employer discharged her on August 2, 2012. The stated reason for the discharge was violation of the employer's customer service standards and lack of productivity after prior warnings.

The claimant had been given a final warning for customer service behavior standard issues on October 18, 2011, and on February 14, 2012 she had been given a final warning with a suspension for productivity issues. On July 31 there were a number of incidents involving both categories of concern. At one point, the claimant was directed by a nurse to clean a machine and refused, although she may ultimately have cleaned the machine. The claimant, who started her shift at 6:45 a.m., was supposed to have the eight patients for whom she was responsible up in their chairs by 8:00 a.m.; on this day, by 8:00 a.m. she only had four of the eight patients up, but rather, she had spent at least 20 minutes at the computer desk trying to resolve an issue with her phone log-on.

Finally, there was a patient who was supposed to go for a hyperbaric therapy appointment in another unit at 12:30 p.m.; shortly before that time, the claimant left on her lunch break and failed to make arrangements for the patient to be taken to his appointment with the other CNA on duty. By the time the other CNA became aware that the resident was to be at the appointment, he could not take the patient to the appointment while the claimant was gone because he could not leave the other patients unattended. Because of these issues after the prior warnings, the employer determined to discharge the claimant.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's continued failure to meet the employer's customer service behavior standards and continued productivity issues after prior warning shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's August 23, 2012 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 31, 2012. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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