

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROL S SUMMERS**  
Claimant

**APPEAL NO. 07A-UI-08626-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROADLAWNS MEDICAL CENTER**  
Employer

**OC: 08/12/07 R: 02  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Carol Summers (claimant) appealed a representative's August 31, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Broadlawns Medical Center (employer) for conduct not in the best interests of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 25, 2007. The claimant participated personally. The employer was represented by Rick Barrett, Legal Resources Coordinator, and participated by Mark Laughery, Director of Ancillary Services, and Gina Nixon, Radiology Assistant.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 11, 1996, as a full-time radiology secretary/receptionist. The claimant signed for receipt of the company handbook on September 11, 1996. The employer issued the claimant written warnings for inappropriate language and/or behavior on January 27, April 25, August 23, 2006, April 10, 12 and 30, 2007. She had been on probation and the employer warned the claimant that further infractions could result in her termination from employment.

On August 9, 2007, a co-worker asked the claimant to work late. The claimant's two co-workers stayed late when needed but the claimant did not due to her health. The claimant offered to stay for a little while. The co-worker told her to go home because it would not help. The claimant was offended by the co-worker's treatment. The claimant had complained to the employer about the co-worker. The co-worker knew how to make the claimant angry causing the claimant to raise her voice.

On August 10, 2007, the claimant asked the co-worker if she was upset for not staying late. The co-worker admitted she was upset. The claimant became loud and was repeatedly asked

to quiet herself. The director of ancillary services asked the claimant to remove herself to his office so they could talk. The claimant continued to be loud in a patient area. After entering the director's office she continued to raise her voice and use profanity. The employer terminated the claimant.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by allowing herself to be angered by her co-worker and behave inappropriately. The claimant's disregard of the employer's interests is misconduct. As such she is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's August 31, 2007 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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