

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY E DONALDSON

Claimant

APPEAL NO. 08A-UI-01154-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC

Employer

**OC: 01/06/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Five Star Quality Care (employer) appealed a representative's January 23, 2008 decision (reference 01) that concluded Mary Donaldson (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 18, 2008. The claimant participated personally. The employer participated by Nancy Dzinic, Director of Nursing; Rita Purcell, Staffing Coordinator; and Abby Johnson, Licensed Practical Nurse. The employer offered and Exhibit One was received into evidence.

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 October 13, 2005, as a full-time registered/charge nurse. The claimant signed for receipt of the employer's handbook on April 12, 2006. The employer issued the claimant a verbal warning on November 30, 2006, after a resident made up a story about the claimant. The resident's relative supported the claimant's version of the incident. On November 2, 2007, the employer issued the claimant a written warning for failure to follow procedures. On November 15, 2007, the employer issued the claimant a written warning for yelling at her superiors. The claimant was extremely tired because of the way the employer was scheduling her work hours. On top of this the employer scheduled an additional training.

The claimant was entitled to two fifteen minute breaks and thirty minutes for lunch. The claimant could not take her breaks without combining them with her lunch period. In the fall the employer talked to the claimant about combining her breaks to take an hour off. Even though it meant the claimant could not take her rightful breaks, the employer told the claimant not to combine her breaks and not to sleep during break time.

On December 30, 2007, the claimant was scheduled to work from 6:00 p.m. to 6:00 a.m. She went to work even though she did not feel well. Her co-worker had been hospitalized the week before due to the flu. After arriving at work the claimant started to experience vomiting and diarrhea. She contacted the staffing coordinator and said she could not work. The staffing coordinator told the claimant to try to find someone to work and she would do the same. The claimant was dizzy and asked her co-worker to stay longer to work the claimant's hours. The co-worker said she could not. No one could work for the claimant. The co-worker told the claimant to lie down in the resident's lounge. The claimant did so but got up to vomit about four times in the hour she was resting. The claimant attempted to complete her shift. At the end she telephoned a family member to driver her home as she was unable to operate her own car.

The claimant was next scheduled on January 3, 2008. She called in sick. The employer asked her to come to work on January 4, 2008, for a meeting. On January 4, 2008, the employer terminated the claimant for sleeping on the job on December 30, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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). Misconduct connotes volition. The claimant did not intend or choose to be sick. The claimant's inability to work due to her illness is not misconduct. The claimant's resting while at work rather than abandoning her job when the employer asked her to stay is not misconduct. The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 23, 2008 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css