

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHERINE V GIBERSON
Claimant

APPEAL NO. 110-UI-15179-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEOKUK COUNTY HEALTH CENTER
Employer

**OC: 08/14/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Catherine Giberson (claimant) appealed a representative's September 12, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Keokuk County Health Center (employer) for conduct not in the best interest of the employer. Administrative Law Judge Elder issued a decision on October 12, 2011, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on November 23, 2011. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 19, 2011. The claimant participated personally. The employer participated by Wendy Stuhr, Director of Nursing; Raymond Brownsworth, Chief Executive Officer; Matt Ives, Chief Financial Officer; Betty Kitzman, Direct Care Worker; Sharon Landstrum, Registered Nurse; and Gautam Jayaswal, Emergency Room Physician. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 July 10, 2006, as a part-time x-ray technician and nurse/paramedic. The claimant signed for receipt of the employer's handbook on August 8, 2007. The handbook indicates a progressive disciplinary system that includes a verbal, written warning before termination. The employer issued the claimant written warnings for rudeness on March 12, 2009, and September 28, 2010. On July 28, 2011, the employer issued the claimant a verbal warning for rudeness. The employer said it would not look back on the claimant's previous warnings because it was a new administration.

On August 4, 2011, the claimant was frustrated with her situation at work. The emergency room had two cardiac patients, one physician was asking questions about another physician's patient and the family of one of the patients was asking for information. When the inquiring physician asked the claimant about the other physician's patient again, the claimant told the inquiring

physician that he needed to ship the patient off before the patient croaked. The patient's family heard the claimant say this same thing to co-workers. The claimant promised the family that the patient would be transferred before the physician made the determination. The family thought the claimant was bragging about herself. The claimant talked to the treating physician and he told the claimant to follow the inquiring physician's orders. The patient was transferred to another hospital.

Based on her actions on August 5, 2011, the claimant was placed on administrative leave through August 9, 2011. The employer told the claimant she was rude to the inquiring physician and the patient's family. On August 5, 2011, the claimant contacted the patient's family and asked for a statement of support of her actions. On August 8, 2011, the family complained to the employer about the claimant's actions on August 4 and 5, 2011. The family member said "This woman is nuts and that is why your hospital has a bad reputation in the community". The employer terminated the claimant on August 9, 2011.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions with regard to inappropriate behavior. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's September 12, 2011 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs