

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MISTY SHAW**  
Claimant

**APPEAL NO: 12A-UI-14303-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 10/28/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Misty Shaw (claimant) appealed an unemployment insurance decision dated November 26, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from the University of Iowa (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 10, 2013. The claimant participated in the hearing. The employer participated through Mary Eggenburg, Benefits Specialist; Don Swanson, Nurse Manager; and Susan Wyse, Assistant Nurse Manager. Employer's Exhibit One was admitted into evidence. 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:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**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 as a full-time Psychiatric Nursing Assistant on November 29, 2010 and her last day of work was June 8, 2012. She was off work after that due to non-work-related medical reasons. The claimant failed to maintain contact with the employer and failed to provide the appropriate releases of information so that the employer could obtain medical documentation to excuse her absences. The employer held a meeting with the claimant on August 20, 2012 during which she was advised she needed to provide medical information to determine whether her absences could be excused under the Americans with Disability Act. The nurse manager last heard from the claimant on August 23, 2012.

A certified letter was sent to her on October 5, 2012 but it was never picked up and was eventually returned to the employer. The letter advised the claimant she had until October 20, 2012 to provide the appropriate releases of information. When there was no contact from the claimant, another certified letter was sent to her on October 24, 2012 stating that she was

discharged due to her unauthorized leave from work. The claimant signed for that letter and received it on November 1, 2012. She never called or contacted the employer to question about the October 5, 2012 letter.

In the hearing, the claimant testified that she was not medically able to work until November 16, 2012. Iowa Workforce records confirm she filed weekly claims for three weeks ending November 17, 2012 in which she certified that she was able and available to work.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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 to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on October 24, 2012 for an unauthorized leave of absence from work. It was her responsibility to maintain contact with the employer and to provide the employer with the appropriate releases of information so that her absences could be excused. The claimant failed to do that and her claim that she did do that is not credible since it is clear

she falsely claimed she was able and available for benefits for the three-week period ending November 17, 2012 when she was not. The claimant's conduct 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated November 26, 2012, 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 been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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