

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIFFINEY L JOHNSON**  
Claimant

**APPEAL NO. 12A-UI-04599-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCM CORPORATION**  
Employer

**OC: 03/25/12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated April 19, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 5, 2012. Claimant participated. The employer participated by Kimber Kleven, administrator; and Michelle Garman, director of nursing. The record consists of the testimony of Kimber Kleven; the testimony of Michelle Garman; and the testimony of Tiffiney Johnson.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a long-term care facility located in Britt, Iowa. The claimant was hired on September 2, 2009, as a full-time certified nursing assistant. Her actual last day of work was March 28, 2012. She was terminated on March 29, 2012.

On March 28, 2012, the claimant reported for work at 6:00 a.m. She was not feeling sick when she came to work. She went to give a resident a shower and became ill when she opened the shower door. She asked another certified nursing assistant to take over for her and she went to the bathroom, where she vomited. She was then sent home.

The claimant had been to the doctor on March 27, 2012, because she was concerned about a recurring rash she had on her arm. The claimant's physician was not sure what it was, but he thought it might be scabies, which is a communicable disease. The claimant was treated by her physician and was told she could go to work. The claimant went to work and reported her condition to her employer. The claimant was sent home.

The employer has a policy that an employee must call the employer before reporting to work with a communicable disease. The claimant came to work on March 27, 2012, and did not report her scabies until she got to work. When the claimant came to work on March 28, 2012, the employer believed that she had again violated the policy on communicable disease and terminated her as a result.

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

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also

Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to establish misconduct.

The issue in this case is whether the claimant was discharged for a *current act* of misconduct. The evidence established that the claimant did violate the employer's policy on March 27, 2012, when she reported for work after being given a diagnosis of possible scabies by her physician. The claimant should have called her employer before reporting to work to avoid the possibility that she might be the source of infection for the residents.

But the claimant was not discharged for this incident but, rather, for what occurred on March 28, 2012. The employer believed that the claimant reported to work a second time with a communicable disease. The claimant testified, and her testimony was corroborated by her day care provider for her children, that she was feeling fine when she went to work on March 28, 2012. She had no reason to believe that she was ill, much less ill with a communicable disease. The scabies had been effectively treated the day before. The claimant got ill for an unknown reason after she came to work. The claimant could hardly report an illness she did not even know that she had.

The final incident that led to discharge was not misconduct. Unless the act that actually led to the discharge was misconduct, the claimant is not disqualified from receiving benefits. Benefits are therefore allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated April 19, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw