

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RACHEL G MORGAN
3001 – 6TH ST SW APT 11
CEDAR RAPIDS IA 52404-4046**

**COTTAGE GROVE PLACE
2115 – 1ST AVE SE
CEDAR RAPIDS IA 52402**

**Appeal Number: 06A-UI-04038-RT
OC: 03/19/06 R: 03
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Rachel G. Morgan, filed a timely appeal from an unemployment insurance decision dated April 5, 2006, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on May 1, 2006, with the claimant not participating. Although the claimant had called in a telephone number where she purportedly could be reached for the hearing, when the administrative law judge called that number at 11:02 a.m. the administrative law judge reached a voicemail for “Rachel.” The administrative law judge left a message that he was going to proceed with the hearing and if the claimant wanted to participate in the hearing she would need to call before the hearing was over and the record was closed. The administrative law judge provided an 800 number for the claimant to call. The hearing began when the record was open at 11:06 a.m. and ended when

the record was closed at 11:23 a.m. and the claimant had not called during that time. Cheryl Hennings, Director of Nursing, and Jaime Spurlock, Human Resources Director, participated in the hearing for the employer, Cottage Grove Place. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a part-time certified nurse's assistant (CNA) and oral medicine technician, from April 27, 2005, until she was discharged on March 17, 2006. The claimant averaged 32 hours per week. The claimant was discharged for failing to follow instructions and perform rounds as required by the employer. The employer required that the CNA going off shift accompany the CNA coming on shift while doing rounds and checking on the residents. On March 17, 2006, the claimant was going off her shift and was supposed to do a round with the CNA coming on the shift. The claimant did not do so. Although the claimant stated that she was giving a bath to a resident and did not have time, the claimant clocked out 20 minutes before the end of her shift so the claimant had sufficient time to do the rounds. The claimant was at that time on a final written warning dated March 15, 2006 for a violation on March 3, 2006 of not properly walking a resident when the claimant failed to use a gate belt which is required by the employer. The claimant was even instructed to do so by a nurse but the claimant stated that she always broke the rules. The claimant had also received a written warning and a one-day suspension on December 22, 2005 for profanity and her attitude. The claimant had also received a written warning and a 30-day probation on December 2, 2005 for insubordination and using profanity.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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's witnesses credibly testified, and the administrative law judge concludes, that the claimant was discharged on March 17, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witnesses credibly testified that on or about March 17, 2006 the claimant failed to make rounds to check on residents as she was instructed to do and as was the protocol of the employer. She was to make this round as the outgoing certified nurse's aid (CNA) with the oncoming CNA. The claimant did not do so. Although the claimant stated to the employer that she was busy giving a shower to a resident, the claimant clocked out 20 minutes before her shift was over which indicated that the claimant had more than sufficient time to do her rounds. The claimant had been given a final written warning just two days earlier for an incident on March 3, 2006 when the claimant failed to follow the employer's policies by using a gate belt in walking with a resident and when this was pointed out to the claimant by a nurse the claimant responded something to the effect that she always breaks the rules. The claimant had also, in December of 2005, been given a written warning and a 30-day probation for insubordination and profanity and also a written warning and a one-day suspension for profanity and her attitude. Because of the numerous warnings and the evidence the claimant had time to do her rounds on March 17, 2006, the administrative law judge concludes the failure to do her rounds was a deliberate act or omission constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and, at the very least, is carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct. What occurred here was far more than mere inefficiency, unsatisfactory conduct, failure in good performance as a result of inability or incapacity or ordinary negligence in isolated instances. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, she requalifies for such benefits.

DECISION:

The representative's decision of April 5, 2006, reference 01, is affirmed. The claimant, Rachel G. Morgan, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct.

cs/tjc