

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENEE J DROST
Claimant

APPEAL NO. 13A-UI-11446-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

OC: 09/08/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Renee Drost (claimant) appealed a representative's October 1, 2013, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Broadlawns Medical Center (employer) for insubordination in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for November 13, 2013, in Des Moines, Iowa. The claimant participated personally. The employer participated by Julie Kilgore, Vice President of Human Resources, and Eric Wilderdyke, Imagings Services Supervisor. The claimant offered and Exhibit A and B were received into evidence. The employer offered and Exhibits One and Two were 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 May 18, 1991, and at the end of her employment she was working as a full-time radiology technician. The claimant signed for receipt of the employer's handbook. She received one written warning for aggressively pointing her finger at a co-worker. She received another written warning for passionately speaking out about wanting holiday time off to be related to seniority. The claimant was on a performance improvement plan for each incident. On June 4, 2013, the employer issued the claimant an Employee Performance Evaluation that found the claimant confrontational and lacking in communication skills. The employer notified the claimant that further infractions could result in termination from employment.

The claimant heard a co-worker gossiping about a male co-worker being charged with sexual harassment by a female co-worker. On September 10, 2013, the claimant asked the male co-worker and his friend if it were true. The male co-workers were upset because it was not true. The female co-worker had never complained and she was upset when she found out what the claimant said. The claimant was terminated on September 11, 2013. The co-worker who told the claimant the story was also terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. She intended to have the inappropriate conversation. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's October 1, 2013, 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