

**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**

**DAWN ROLING  
1134 – 10<sup>TH</sup> ST SE  
CEDAR RAPIDS IA 52401**

**MERCY MEDICAL CENTER  
701 – 10<sup>TH</sup> ST SE  
CEDAR RAPIDS IA 52403**

**Appeal Number: 04A-UI-03009-ET  
OC 02-01-04 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 8, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 7, 2004. The claimant participated in the hearing. Joyce Peiffer, Nurse Manager and Vickie Farmer, Human Resources Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time staff nurse for Mercy Medical Center from May 5, 1997 to February 5, 2004. On January 21, 2004, Nurse Manager Joyce Peiffer received a complaint

from a patient's family regarding the care he received from the claimant January 20, 2004. The patient's wife stated she only saw the claimant once during the day shift and at that time the claimant administered medication but did not speak. Ms. Peiffer talked to other staff members about the claimant's work performance that day and was told the claimant was at the desk most of the day. The other staff members thought she was the charge nurse but she was not assigned to act as the charge nurse that day. The evening nurse reported that the patient was in a lot of pain when she came on duty and had not received pain medication since 8:00 a.m. The patient's family requested that the claimant not be assigned to care for him again. After Ms. Peiffer talked to the claimant about the situation, the claimant asked her to speak to another patient she cared for who was also a nurse. That patient told Ms. Peiffer her care was "adequate" but not what she would have expected. On August 25, 2003, the claimant received a written warning after a patient complained that she came in and set a basin of water next to him and stated, "Here, you can give yourself a bath," and left without offering to help him. The patient asked that the claimant not be his nurse again. Although the claimant denied being responsible for giving the bath that day, the warning stated the claimant must immediately improve her communication with patients and staff. The employer also spoke to the claimant about excessive personal use of the phone and complaints she was "short" with patients and gave the impression she did not "care about them." On December 8, 2003, the employer received a patient complaint regarding the care provided by the claimant. The patient stated the claimant did not knock before entering the room and acted like she "did not want to be at work." Co-workers also complained about the claimant sitting in the nurse's station and her unwillingness to help other employees with patient care. The employer issued a written warning and three-day in-house suspension to the claimant. The warning stated the employer expected immediate improvement in the claimant's "communication skills and commitment to co-workers." On January 5, 2004, the claimant received a written warning for accumulating five unscheduled absences in the previous six months. The employer terminated the claimant's employment after investigating the complaint of January 20, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant received four warnings in five months regarding deficiencies in her communication and patient care skills. Despite those warnings, however, the claimant's performance did not improve. In addition to patient complaints, the employer received reports that the claimant avoided patient care responsibilities by spending too much time at the nurses' desk and often failed to help co-workers. Although the claimant testified her communication problems were due to shyness, the evidence appears to indicate it was more a matter of her attitude toward patients, co-workers, and her job. The warnings and in-house suspension put the claimant on notice that a further incident could result in termination. The claimant's actions January 20, 2004, were not an isolated incident and her conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The March 8, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/b