

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENA M NELSON

Claimant

APPEAL NO. 12A-UI-09337-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 07-08-12

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 3, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 3, 2012. The claimant did participate. The employer did participate through Cheryl Williams, Human Resources Associate. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a LPN-charge nurse full time beginning February 26, 1997 through July 6, 2012 when she was discharged. On Monday July 2, 2012 the claimant wore shorts to work that looked like denim, but were cotton. The employer only recently allowed employees to wear denim pants or shorts and then only on Fridays and only if they paid into the fundraising project. The claimant's supervisor Ms. Prevo approached the claimant told her that her shorts looked too much like denim to be acceptable on any other day than Friday. The claimant was not sent home to change clothes nor was she told she would be disciplined, she was only told that she could not wear the shorts to work unless it was a Friday and she participated in the fundraising activity as was expected of all employees. The claimant then began to make snide comments about the clothing, makeup and jewelry worn by Ms. Prevo. The claimant made the comments to numerous coworkers, who all provided statements found in Employer's Exhibit One, and made the comments loudly enough that some of the residents could overhear her. One of the claimant's coworkers reported her comments to human resources personnel who then conducted an investigation. The claimant was sent home on suspension while the employer collected information. The reports submitted by the employer unanimously confirm that the claimant was making what could at best be described as "unkind" statements about her supervisors clothing, makeup and manner of dress. Despite the claimant's denial, she did mention her supervisor by name in making the comments. According to the employer's disciplinary policy the claimant had received a final written warning on June 28 which she signed and put her on notice that any additional rule infractions would lead to her discharge.

She was not discharged because she wore shorts that appeared to be denim, but due to her own negative reaction and inappropriate actions and comments when legitimately told by her supervisor to wear the shorts only on Fridays.

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 § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It was not unreasonable for the employer to expect the claimant to act professionally when given a simple instruction by her supervisor. The employer's policy, a copy of which had been given to the claimant prohibits inconsiderate treatment of others. The administrative law judge is persuaded that the claimant made the comments to other coworkers within hearing of the residents. The comments were a violation of the employer's policy and the claimant had notice only days before this that one additional write up would mean her discharge. Claimant's repeated failure to comply with the policy manual after having been warned is evidence of misconduct to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The August 3, 2012 (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css