

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANY PHILLIPS

Claimant

APPEAL NO: 11A-UI-00333-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OTTUMWA REGIONAL HEALTH CENTER

Employer

OC: 12/12/10

Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Brittany Phillips (claimant) appealed an unemployment insurance decision dated January 4, 2011, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Ottumwa Regional Health Center (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 15, 2011. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Jim Jones, Director of Human Resources. Employer's Exhibits One through Seven were admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

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 employed as a part-time home health aide from December 17, 2009 through December 12, 2010. She was discharged for a final act of coercing a patient to give her \$20.00 on December 8, 2010. The claimant signed an employee acknowledgment which confirmed that she would not accept money or gifts or borrow items from patients unless the gift is of small value (\$25.00 or less) and only with authorization from the director or clinical manager. The claimant told a patient on December 8, 2010 that she was out of gas and might "freeze to death" if the patient did not give her the money. The patient gave her the money but asked the employer on December 10, 2010 if the claimant was going to repay her the loaned money.

The claimant was counseled on May 5, 2010 for failing to complete her scheduled visits. A memo was placed in her file on May 10, 2010 for failing to know where she was going prior to the appointments. The claimant received a counseling report on July 26, 2010 for unauthorized absences. The claimant had been placed on a performance improvement plan on September 3,

2010 due to excessive absences and a lack of proper care for her patients. She was also placed on probation for not following policy.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on December 10, 2010 for repeated inappropriate conduct. The final incident involved coercing a patient to give her money. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated January 4, 2011, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css