

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURI A CURRY
Claimant

APPEAL NO. 07A-UI-03208-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 02/11/07 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lauri Curry (claimant) appealed a representative's March 22, 2007 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she had voluntarily quit employment with Care Initiatives (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 16, 2007. The claimant was represented by Randy Degeest, Attorney at Law, and participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

ISSUE:

The issue is whether the claimant was discharged for 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 hired on April 15, 2006, as a full-time licensed practical nurse. The claimant was willing to work whatever hours the employer gave her but she liked working on Tuesdays, Thursdays and weekends. The claimant expressed her preference to the employer. On February 16, 2007, the employer terminated the claimant indicating there were no hours available for her on the weekends.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant was not 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.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not participate in the appeal hearing and no evidence of misconduct was presented at that hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The decision of the representative dated March 22, 2007, reference 02, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css