

**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**

**KATHLEEN R STEELE  
4600 SE 4<sup>TH</sup> ST APT 104  
DES MOINES IA 50315**

**MERCY HOSPITAL  
ATTN HUMAN RESOURCES  
1055 – 6<sup>th</sup> AVE STE 105  
DES MOINES IA 50314**

**Appeal Number: 05A-UI-01370-BT  
OC: 01/09/05 R: 02  
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.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kathleen Steele (claimant) appealed an unemployment insurance decision dated January 27, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Mercy Hospital (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 23, 2005. The claimant participated in the hearing. The employer participated through Ron Robertson, Employee Relations Coordinator; Nancy Bellville, Director of Endoscopy; and Suzanna Bolton, Supervisor and Team Coordinator. Employer's Exhibits One and Two were admitted into evidence.

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 full-time employee from April 5, 2001 through January 6, 2005. She had been working as an endoscopy assistant from December 9, 1993. She was discharged for infection control issues. On December 22, 2004, it was reported the claimant transported a patient and afterwards contaminated the patient's paperwork since she did not remove her gloves. Later the claimant had diarrhea and soiled her clothing. She changed her clothing but used the clinical sink in the endoscopy room to rinse out her soiled clothing. The employer understood the claimant was not feeling well and asked her to go home but the claimant refused stating that she did not want to have another unscheduled absence. Although this was not reported at the time of discharge, the claimant now reports she had "dumping syndrome" since she had drank some cappuccino that went right through her as a result of having a gastric bypass surgery. The employer reports the claimant soiled her clothing again in the afternoon that day but the claimant disagrees. It took two weeks before the claimant was discharged because the claimant and other necessary parties took vacation over the Christmas holiday.

The claimant had received a written counseling on April 2, 2004 for work performance and she was issued a written warning on November 16, 2004 for work performance and infection control. On October 25, 2004, cross contamination was observed when the claimant pre-cleaned a dirty scope then proceeded to take a clean water bottle and added sterile water to the bottle without changing her gloves. On October 27, 2004, the claimant was observed not washing her hands after cleaning a dirty scope. The employer reported the claimant explained that she did not like to wash her hands because they "dry out" but the claimant testified that she only said that she does not like to use alcohol products when washing her hands.

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 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 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 for an incident that occurred two weeks prior to the discharge. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8). The delay in discharge was reasonable under the circumstances and the administrative law judge finds the final act to be current act.

The claimant was discharged for repeated infection control violations. She admitted washing out her soiled clothing in the clinical sink but does not admit she did anything wrong. She had been previously warned about infection control issues. Sanitation and infection control issues are probably the most important policies in a hospital. People's lives depend on hospital employees strictly following and adhering to safety guidelines and sanitation standards. The claimant's conduct amounts to a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. 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 27, 2005, 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.

sdb/s