

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANINE M MCILLECE
Claimant

APPEAL NO. 08A-UI-11069-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: 10-19-08 R: 04
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 14, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 10, 2008. The claimant did participate and was represented by Howard E. Zimmerle, II, Attorney at Law. The employer did participate through Linda Sanders, Human Resources Assistant. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a registered nurse part time beginning March 19, 2001 through October 17, 2008 when she was discharged.

The claimant was warned on October 10, 2008 about her missing call or being late to arrive on call in September 2008. The warning she received specifically put her on notice that if she missed call again she could be disciplined up to and including discharge.

On October 12, the claimant was on call. She was to arrive at the work site by 8:30 a.m. but did not arrive until 8:50 a.m. The claimant was late because she overslept. When she awoke she called her coworker and her supervisor to tell them she was running late but would be in.

The claimant finished work at approximately 10:30 a.m. but knew she was to be on call for the remainder of the day until 7:00 a.m. October 13. At 11:00 p.m. the claimant was called to come into the hospital to assist a physician with a procedure on a patient. She answered the phone and told the nurse that she would be into work immediately. The claimant then fell asleep and woke up again at 5:00 a.m. When she woke she called the hospital and told the nurse that she had fallen asleep. The claimant was told that when she failed to show up for the procedure another nurse was called in to cover for her.

The employer's handbook and policies were given to the claimant when she was hired. The employer's policies provide for progressive discipline including a first, second, and final warning prior to termination. However, the employer's policy also provides that the employer reserves the right to terminate employment at any time for any reason with or without notice. The employer is not obligated under their policy to follow the progressive disciplinary policy.

The claimant was told she was discharged by Larry Roberson on October 17, 2008. The claimant appealed her discharge under the Fair Treatment Policy to a panel that determined she should not have been discharged. Under the employer's policy, the panel makes a recommendation to the Vice President of Human Resources, Heidi Kahly-McMahon, who may accept or reject the recommendation of the panel. Ms. Kahly-McMahon rejected the panel's recommendation that the claimant be reinstated.

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.

The claimant was specifically warned on October 10 that if she was late or missed her call again she could be discharged at the employer's discretion. Just two days later the claimant was by her own admission late to her first call of the morning because she overslept. She was called

again at 11:00 p.m. that same day to come in for an emergency call and agreed to do so. She then fell asleep until 5:00 a.m. missing the call entirely and causing another nurse to be called in to cover for her. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

The claimant knew or should have known based upon the warning of October 10 and the employer's policy that missing call could lead to her discharge. While the claimant may have been looking for another job that did not require she be on call, she was not relieved of her obligation to respond to and show up when called to come in merely because she was looking for another position. The employer is obligated to provide medical care to individuals at all hours of the day and night, necessitating that some employees report to work when called. The claimant's failure to report for call was not an isolated incident as she had been disciplined two days prior for failing to report for call in September. Additionally, the claimant was late for her first call of October 12 then missed her second call on October 12 entirely. The reason for missing call were not attributable to the employer but merely because the claimant overslept and fell back to sleep after being called. The employer had put the claimant on notice that she would be discharged for missing call again. The employer's evidence does establish that the claimant acted in a manner she knew to be contrary to the employer's interests or standards. In short, substantial misconduct has been established by the evidence. Benefits are denied.

DECISION:

The November 14, 2008, 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