

**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**

**LORI A LAKE
3701 ELM DR APT 1
URBANDALE IA 50322**

**CENTRAL IOWA HOSPITAL CORP
c/o HUMAN RESOURCES
1313 HIGH ST STE 111
DES MOINES IA 50309-3119**

**Appeal Number: 04A-UI-03139-HT
OC: 02/15/04 R: 02
Claimant: Appellant (2)**

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, 4th 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

STATEMENT OF THE CASE:

The claimant, Lori Lake, filed an appeal from a decision dated March 15, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 12, 2004. The claimant participated on her own behalf. The employer, Central Iowa Hospital Corporation (CIH), participated by Human Resources Business Partner Barb Foertsch.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Lori Lake was employed by CIH from June 2, 1999 until February 20, 2004. She was a clinical partner.

Ms. Lake received written warnings on September 9 and October 6, 2003, for work performance issues. She was advised her job was in jeopardy. On February 10, 2004, three nurses reported complaints to Nursing Services Manager Donette Guisinger about the claimant. They alleged she had been ordering food for a diabetic which was not on the approved diet, she did pain assessment/management on patients which was outside her authorized job duties, and would take breaks at the end of the shift, resulting in tasks being left undone for the next shift to complete. The claimant denied the allegations, asserting that she had only been inquiring of the dietician whether certain foods would be allowed to the patient, that she did not leave tasks undone at the end of the shift except for an occasional blood draw which was permitted by policy, and did not do pain assessment/management on patients unless under the direction of a nurse.

Ms. Guisinger did some form of investigation on the complaints and discharged the claimant on February 20, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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 claimant has denied all of the allegations against her by the nursing staff on February 10, 2004. The employer has failed to provide any first-hand, eye witnesses testimony from the nurses making the complaints or the manager who investigated them. The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982) and the administrative law judge must conclude the employer has failed to rebut the claimant's denial or offer anything other than second-hand hearsay on these issues. It has not met its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of March 15, 2004, reference 01, is reversed. Lori Lake is qualified for benefits provided she is otherwise eligible.

bgh/kjf