

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TESSA J PERRINE
Claimant

APPEAL NO. 10A-UI-06249-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALEGENT HEALTH
Employer

**Original Claim: 03/28/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 16, 2010, reference 01, that held she was discharged for misconduct on March 26, 2010, and that denied benefits. A telephone hearing was held on June 15, 2010. The claimant participated. Lisa Weilage, Assistant Director, and Annette Burwell, Para Legal, participated for the employer. Employer Exhibits A through F were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time medical assistant on May 4, 2009, and last worked for the employer on March 25, 2010. The claimant received disciplinary action from verbal counseling on September 13, and November 13, 2009, to written warnings on January 26, and March 9, 2010. The claimant did not believe she had sufficient training with written procedures, which contributed to her job performance issues, but she did not state this on the employee comments section of the written discipline.

On March 13, the claimant failed to obtain a proper consent for a procedure that is required by providers. During this hearing, the claimant admitted she was partially at fault, but also blamed the lack of consent form in the file as a reason for the failure. Supervisor Weilage discovered the issue on March 17, and reported it on March 25 to employer human resources, who reviewed claimant's record. The employer discharged the claimant on March 26, 2010 for the most recent policy violation (lack of consent) in light of prior discipline.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on March 26, 2010, for repeated violations of policy.

The claimant knew the employer's policies by reason of counseling and warnings that established the required standard of behavior. If the claimant had an issue with training and procedure, she needed to raise it during the course of her employment and especially in response to the written warnings. The delay from the date of supervisor discovery of the consent form issue to review by human resources was favorable to the claimant, who continued in employment and had the benefit of that further scrutiny. The disciplinary record in light of the most recent issue constitutes job-disqualifying misconduct.

DECISION:

The department decision dated April 16, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on March 26, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw