

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID S REEVES**  
Claimant

**APPEAL NO. 10A-UI-06719-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLARKE COUNTY PUBLIC HOSPITAL**  
Employer

**OC: 03/28/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Clarke County Public Hospital (employer) appealed a representative's April 26, 2010 decision (reference 01) that concluded David Reeves (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 1, 2010. The claimant participated personally. The employer participated by Kate Emanuel, Human Resources Director. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 December 8, 2009, as a full-time emergency response coordinator/emergency room nurse. The claimant signed for receipt of the employer's handbook on December 9, 2009. The employer had a policy that prohibited using the employer's computer for personal reasons. Even so, the claimant received jokes from co-workers and no one was terminated for it.

In January 2009, the claimant was at a meeting with a community member. The member propositioned the claimant when she made a sexual comment to him after the meeting. On January 28, 2010, the two sent e-mails to each other. The member told the claimant she felt uncomfortable with communications after her comment.

The employer had discussions with the claimant on February 3, 2010, about an e-mail he sent. Earlier the claimant was in a meeting and asked why the employer did things a certain way. Even though the employer encouraged employees to ask, co-workers were angered by the claimant's question. He wrote them apologizing for upsetting them. The employer did not want the claimant to either ask questions or send apologies. On March 18, 2010, the employer talked to the claimant about being argumentative in his communications. The employer issued the

claimant an average evaluation on March 23, 2010. The claimant was supposed to work on cooperation and arriving at work on time.

On March 26, 2010, the employer heard about the January 28, 2010, e-mails. The employer asked the claimant for copies but he had deleted them. The employer suspended the claimant while it investigated. On April 2, 2010, the employer terminated the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow 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.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to

that separation. Inasmuch as employer had not previously warned claimant that he could be terminated for further infractions, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's April 26, 2010 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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