

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA S HICKS**  
Claimant

**APPEAL NO. 07A-UI-08462-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALEGENT HEALTH**  
Employer

**OC: 08/05/07 R: 01  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Alegent Health filed an appeal from a representative's decision dated August 30, 2007, reference 01, which held that no disqualification would be imposed regarding Melissa Hicks' separation from employment. After due notice was issued, a hearing was held by telephone on September 19, 2007. Ms. Hicks participated personally. The employer participated by David Pierce, Director of Food and Nutrition, and was represented by Joshua Burrows of Tax Corporation. Exhibits One through Seven were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Hicks was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hicks was employed by Alegent Health from March 28, 2005 until August 7, 2007. She was employed full time as a catering associate. Her primary duties were to deliver and pick up menu selection forms from patients and deliver meals. Ms. Hicks was also responsible for cleaning and stocking the three kitchenette areas on her assigned floor. She was to do light cleaning during the week and deep cleaning on alternate weekends.

On or about August 6, there were complaints about all three kitchenettes assigned to Ms. Hicks. There were complaints that the refrigerators and microwave ovens were all dirty. It was also reported that the food supply containers needed to be cleaned and that the coffee pots had not been cleaned. Ms. Hicks worked from 6:30 a.m. until 3:00 p.m. on both August 4 and August 5. A supervisor signed off indicating that the refrigerators and microwaves had all been sanitized at the beginning of Ms. Hicks shift on August 4 and August 5. When questioned by the employer, Ms. Hicks indicated that she had cleaned the areas. Because she had received prior warnings, she was discharged on August 7, 2007.

Ms. Hicks' last warning prior to discharge occurred on July 9, 2007 when the employer met with her concerning a complaint from June 19. The complaint was that three patients did not receive noon meal trays. Prior to that time, the last warning was on October 7, 2006 when she was warned about not having the breakfast cart properly stocked and the failure to obtain menu selections from a patient. Ms. Hicks had received other warnings prior to October for 2006, only one of which addressed the cleanliness of her areas. It was noted on June 20, 2006 that there were crumbs in the bottom of one refrigerator and the microwave in one area was dirty.

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

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Before a disqualification may be imposed, the evidence must establish that the discharge was prompted by a current act that constitutes misconduct within the meaning of the law. See 871 IAC 24.32(8). In the case at hand, Ms. Hicks' discharge was triggered by the complaint that she did not do deep cleaning in the three kitchenettes assigned to her on August 4 and August 5.

Ms. Hicks testified that she did clean her assigned areas on the weekend in question. A supervisor signed off that the refrigerators and microwaves in her area were sanitized the morning of August 4 and the morning of August 5. Since it was Ms. Hicks' weekend to clean, the administrative law judge must presume that she was responsible for the condition of the refrigerator on the morning of August 5, which meant that she had to have cleaned it on August 4. If the refrigerator and microwave were sanitized the morning of August 5, then the condition discovered by others had to have occurred after the supervisor signed the verification. There is no way of knowing whether the conditions complained of by others occurred before Ms. Hicks cleaned or after. There was no satisfactory evidence concerning the amount of traffic in the kitchenettes. If areas are sanitized in the morning but found to be dirty in the afternoon, it is clear that it does not take much time for dirt and grime to accumulate. Problems may have occurred after Ms. Hicks cleaned.

The employer failed to establish to the satisfaction of the administrative law judge that Ms. Hicks did, in fact, fail to clean her assigned areas on August 4 and August 5. Therefore, it must be concluded that there was no misconduct on those dates. The next most prior disciplinary action was on July 9. Conduct occurring on that date would not represent a current act in relation to the August 7 discharge date. Absent evidence establishing a current act of misconduct, the administrative law judge is not free to consider other, past acts that might constitute misconduct.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

**DECISION:**

The representative's decision dated August 30, 2007, reference 01, is hereby affirmed. Ms. Hicks was discharged but a current act of misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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