

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN A WESTEMEYER
Claimant

APPEAL NO. 12A-UI-10265-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CENTRAL IOWA HOSPITAL
CORPORATION**
Employer

**OC: 07/22/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Susan Westemeyer (claimant) appealed a representative's August 16, 2012 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Central Iowa Hospital Corporation (employer) for misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 17, 2012. The claimant was represented by Jim Hamilton, Paralegal, and participated personally. The employer participated by Amanda Banks, Human Resources Business Partner. 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 May 12, 2004, as a full-time public safety officer. The claimant did not receive the employer's handbook. The employer's policies are reviewed annually. The CORE values are posted: Compassion, Openness, Respect, and Excellence.

On September 26, 2011, the employer issued the claimant a written warning for inappropriate behavior. The claimant at all times was acting appropriately even though the nurses were rude to the claimant. The claimant complained about the nurses but the employer would not accept the complaint. The employer notified the claimant that further infractions could result in termination from employment.

On May 9, 2012, the claimant was told to perform a stand by and a nurse would not allow her to do so. The claimant complained to her supervisor and the doctor removed the stand by. The claimant followed the employer's protocol but was issued a written warning for complaining that

the nurse would not allow her to perform her job. The employer notified the claimant that further infractions could result in termination from employment.

On July 11, 2012, a person approached the metal detector, placed items in the white box and walked through the detector. The claimant saw there was a knife in the box of items. She told the person that he could carry the knife into the hospital. The claimant offered to hold the knife and give the person a receipt. The person said that he would not give up his knife. The claimant walked the person to the door and told him to return after leaving the knife in his vehicle. The claimant followed protocol. The person complained that the claimant was rude. On July 24, 2012, the employer terminated the claimant for her actions on July 11, 2012.

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). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony

but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 16, 2012 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs