

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA S BARNES

Claimant

APPEAL NO. 08A-UI-03440-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OTTUMWA REGIONAL HEALTH CTR INC

Employer

**OC: 03/02/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Patricia Barnes filed an appeal from a representative's decision dated March 31, 2008, reference 02, which denied benefits based upon her separation from Ottumwa Regional Health Center Inc. After due notice was issued, a hearing was held by telephone on April 22, 2008. Ms. Barnes participated personally. Participating on her behalf was Victoria Siegel, Attorney at Law. Employer participated by Janey Huston and Monica Kidder. Exhibits One and Two were received into evidence.

ISSUE:

At issue in this matter is whether the claimant was discharged for intentional misconduct in connection with her work.

FINDINGS OF FACT:

The claimant was discharged when she exceeded the permissible number of attendance infractions allowed under the health centers "no-fault" attendance policy. Under the policy employees are allowed only a certain number of attendance infractions during a rolling one-year period. Exceeding that amount subjects the employee to discharge from employment. Ms. Barnes was aware of the policy. Ms. Barnes was absent from work on a number of occasions due to illness and properly reported her impending absences. The claimant missed two meetings that were held by management with the organization's CEO. In one instance the claimant honestly "forgot" about the meeting as it was scheduled on her day off. On the other occasion Ms. Barnes inadvertently mis-set her alarm and did not wake up in time to attend the meeting after previously working. The claimant was considered to be a good and valued registered nurse. The claimant had been employed by the organization from January 8, 1978 until her termination on February 25, 2008.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant was discharged for intentional disqualifying misconduct in connection with her work. It

does not. The evidence in the record establishes that the claimant had been absent on a number of occasions due to illness and had properly reported her absence as required by policy. Ms. Barnes had missed two CEO meetings although she did not intend to do so. On one occasion the claimant forgot that there had been meetings scheduled as it was scheduled on her normal day off. On another occasion the claimant inadvertently mis-set her alarm clock and did not wake up in time to attend the meeting after working.

The question before administrative law judge is not whether the employer has a right to discharge an employee for these reasons but whether the discharge was disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Ms. Barnes may have been a sound decision from a management viewpoint for the above-stated reasons, the administrative law judge concludes that intentional disqualifying misconduct has not been shown.

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.

For the reasons stated herein the administrative law judge concludes that the claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 31, 2008, reference 02, is hereby reversed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css