

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J RICHE
Claimant

APPEAL NO. 07A-UI-03944-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENNIE EDMUNDSON
MEMORIAL HOSPITAL
Employer

OC: 03/18/07 R: 01
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Barbara Riche (claimant) appealed a representative's April 9, 2007 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Jennie Edmundson Memorial Hospital (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 2, 2007. The claimant participated personally. The employer participated by Christie Rogge, Workforce Manager, and David Pahl, Team Leader Environmental Services.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 4, 1999, as a full-time cleaning technician. Each year the claimant signed a confidentiality agreement indicating she was not to discuss medical, personal, or financial information about workers or patients. The claimant last signed the agreement on October 31, 2006. At the time of hire new employees are trained about confidentiality, but patients' visitors were not mentioned.

The employer issued the claimant a verbal warning in late December 2006, and a written warning on February 8, 2007, regarding her productivity. She was placed on a performance improvement plan. In addition the employer gave the claimant a verbal warning in January 2007, for inappropriate behavior toward a lead person.

On March 20, 2007, the claimant was excited to see a well-known community figure sitting in the visitor section of the psychiatric area of the hospital where she was cleaning. She told a co-worker that she saw him on the psych floor. The coworker reported the claimant to the employer. The employer terminated the claimant for violation of the confidentiality agreement.

The employer testified that the specifics of the rules regarding confidentiality are contained within the agreement. The agreement did not mention visitors, and so the agreement did not apply to visitors.

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). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. By its own testimony, the employer admitted that it did not train new employees regarding confidentiality and patients' visitors. By its own testimony, the employer admitted that the confidentiality agreement did not apply to visitors. Yet, the employer terminated the claimant for violating the confidentiality agreement. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 9, 2007 decision (reference 02) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw