

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARREN J LOGAN
Claimant

APPEAL NO. 14A-UI-03172-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEN MEMORIAL HOSPITAL
Employer

**OC: 02/16/14
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 10, 2014, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on April 15, 2014. Claimant participated. Employer did participate through Mary Peterson, Human Resources Business Partner, and Brian Van Brocklin, Operating Room Manager.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a staff nurse beginning on July 9, 2012 through February 17, 2014 when he was discharged. The claimant was discharged under the employer's progressive disciplinary policy when he reached a level four write-up for events on February 7, 2014. The claimant had two separate events occur on February 7. The employer requires that the circulating nurse insure that the surgeon mark on the patient's body the surgical site so that 'wrong sided' surgeries can be avoided. The claimant noted that the surgeon had marked the patient's right wrist as the surgery site, but he had in fact not made the required mark. The error was noticed by the surgical technician in the operating room and the surgeon was brought in to correct the error. As the circulating nurse the claimant was responsible for insuring that the procedures were followed prior to taking the patient back to the operating room. When questioned by the employer, the claimant simply stated he must have missed the lack of a mark. Another circulating nurse was also disciplined for her part in the same event.

Later that same day, Emily, another nurse approached the claimant, (who was having a bad day) in an operating room and put her hands on his shoulders and asked him how he was doing. The claimant replied, "get your f*cking hands off me, and back the f*ck up." The comments were heard by the others in the room, which did include a patient. The employer interviewed all three witnesses who provided the same account about how the claimant spoke to Emily. The employer's policy prohibits use of profanity when speaking to coworkers.

Mr. Van Brocklin learned of the events on February 10 and began an investigation. The claimant was interviewed on February 13 and at no time did the employer tell the claimant that he would not be discharged as a result of the events. The employer reviewed the policy, the violation and followed their own policy in discharging the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations or in situations in which the target of the statements is no present to hear them. See *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990).

In *Henecke v. Iowa Dep't of Job Serv.*, 533 N.W.2d 573 (Iowa Ct. App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The administrative law judge is persuaded that the claimant did not correctly follow the employer's procedures before he took a patient into the operating room. The claimant's failure to follow the procedure to insure that the surgeon had correctly marked the operation site was a violation of the duty he owed to the employer. Despite the claimant's denial, the administrative law judge is persuaded that the claimant did use profanity when speaking to Emily. His actions amount to substantial misconduct sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The March 10, 2014, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css