

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN MCCARTY
Claimant

APPEAL NO. 13A-UI-09243-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRI-STATE NURSING ENTERPRISES INC
Employer

OC: 07/07/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Robin McCarty (claimant) appealed a representative's August 9, 2013, decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Tri-State Nursing Enterprises (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 scheduled for September 16, 2013. The claimant participated personally. The employer participated by Nicole Moodie, Staffing Supervisor.

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 employer is a temporary agency and staffing service. The claimant was hired on June 18, 2013. During the week ending July 13, 2013, the claimant worked 27 hours and earned \$362.38 gross wages. She continued to work where the employer placed her. She was last assigned to work at Memorial Community Hospital on July 23 and 24, 2013, as a part-time certified nursing assistant. The claimant needed a license in order to work for the employer. The claimant was next scheduled to work on August 2, 2013. On August 1, 2013, the claimant notified the employer that her license was revoked. The employer could no longer employ the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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 failure of an employee to maintain a license which she must have to perform the duties of the job is misconduct. The claimant's license was revoked. Her subsequent termination from employment was misconduct. She is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's August 9, 2013, decision (reference 04) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs

