

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**AMY L TALLANT
#3 CARTER LAKE CLUB
CARTER LAKE IA 51510**

**UNIVERSITY OF NEBRASKA MEDICAL
CENTER
c/o JOHNSON AND ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007**

**JACQUELINE HRUSKA
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4401 WESTTOWN PKWY
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**Appeal Number: 06A-UI-00610-A
OC: 12-04-05 R: 01
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Amy L. Tallant filed a timely appeal from an unemployment insurance decision dated January 9, 2006, reference 01, which disqualified her for benefits. After due notice was issued, a hearing was held in Council Bluffs, Iowa, on February 24, 2006. Ms. Tallant participated and was represented by Jacqueline Hruska, Attorney at Law. Christina Gaskin testified for the claimant pursuant to a subpoena. The employer had notified the administrative law judge that it did not intend to participate in the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Amy L. Tallant was employed as an LPN by the University of Nebraska Medical Center from October 13, 2005 until she was discharged on December 9, 2005 by nurse manager Jerry Cooper for an incident which had occurred in late November.

On November 23, 2005, Ms. Tallant brought her 11-year-old sister to work to job shadow. Other employees in the area had done the same in the past. After first securing the consent of a juvenile patient's mother, Ms. Tallant allowed her sister to observe the intake. When the doctor arrived, she asked Ms. Tallant's sister to leave the room. She did so. She went to another office and did not interact with any patients. Later Ms. Tallant showed her how the Center's computer system worked. In doing so, the sister was able to see some patients' names. Ms. Tallant did not realize that she was violating HIPAA or Medical Center policy by doing these things.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate. The claimant's evidence is not challenged in this record. The evidence establishes that any violations were inadvertent, not deliberate. Isolated instances of poor judgment or poor performance are excluded from the definition of misconduct set forth above. Benefits are allowed.

DECISION:

The unemployment insurance decision dated January 9, 2006, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kkf/s