

**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**

**ELVA J MCBRIDE
PO BOX 631
MELCHER IA 50163**

**ACCESSIBLE MEDICAL STAFFING
939 OFFICE PARK RD #124
WEST DES MOINES IA 50265**

**Appeal Number: 04A-UI-03025-CT
OC: 05/11/03 R: 02
Claimant: Respondent (1)**

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 for Misconduct

STATEMENT OF THE CASE:

Accessible Medical Staffing filed an appeal from a representative's decision dated March 11, 2004, reference 03, which held that no disqualification would be imposed regarding Elva McBride's separation from employment. After due notice was issued, a hearing was held by telephone on April 8, 2004. Ms. McBride participated personally. The employer participated by Karey Brewster, Staffing Coordinator. Exhibit One was admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Accessible Medical Staffing is an agency which provides medical personnel to various care providers on an as-needed basis. Ms. McBride was employed as a CNA beginning September 4, 2003 and last worked on November 5, 2003. She declined an assignment on November 12 and was not offered further work after that point.

The employer decided on December 5 that Ms. McBride would not be offered further work. However, this decision was not communicated to her until January 12, 2004. The decision to discharge her was based, in part, on the fact that she hung up on the administrator on two occasions, the last of which was on December 5. On both occasions, Ms. McBride was upset because she had not received her pay as expected. She was talking with the administrator to determine why she had not been paid. Ms. McBride hung up when she did not receive a satisfactory explanation for the delay in receiving her pay.

There were several occasions on which care providers notified the employer that Ms. McBride was not welcome to return to their facilities. The employer mailed her a written warning on October 28 advising that she was on a 30-day probation because of her attitude with clients. The employer received a complaint about Ms. McBride on November 3 but still sent her on an assignment on November 6 and offered her further work on November 12.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. McBride was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer cited two reasons for Ms. McBride's discharge, hanging up on staff and being rude at client facilities. The complaints of rudeness have not been substantiated by the evidence. The information from client facilities is not sufficiently detailed to allow the administrative law judge to make an independent determination regarding the conduct complained of. Furthermore, the employer continued to send Ms. McBride on assignments in spite of the complaints and in spite of having placed her on probation. The administrative law judge concludes, therefore, that client complaints did not trigger the decision to discharge.

Ms. McBride acknowledged that she hung up on the administrator on two occasions, both of which concerned the failure to receive her pay timely. It was not unreasonable for her to be upset at not receiving her pay when she expected it. It is unreasonable to expect employees to be docile and well-mannered at all times. Although Ms. McBride may have used poor judgment in hanging up on the administrator, her conduct did not evince a willful and wanton disregard for the employer's standards.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated March 11, 2004, reference 03, is hereby affirmed. Ms. McBride was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/kjf