

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOLENE HYNES

Claimant

APPEAL NO. 08A-UI-00363-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARY GREELEY MEDICAL CENTER

Employer

**OC: 12-09-07 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 3, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 28, 2008. The claimant participated in the hearing. Betsy Schoeller, Director of Human Resources and Education Management; Shaunda Calkins, RN/Director of Cardiology Services; Amy McDonough, RN/Clinical Supervisor of Medical Telemetry Unit; and Sheryl Knutson, Manager of Employee Relations, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time monitor technician for Mary Greeley Medical Center from June 2, 2003 to December 13, 2007. On November 15, 2007, Lead Nurse Carla Wickman asked the claimant to call additional staff in because the unit was extremely busy. The claimant called five employees but they were unable to come in. When Ms. Wickman came back and asked her to call more employees the claimant stated she was “not responsible for calling labor for the organization.” Ms. Wickman felt the claimant was refusing a directive and was insubordinate. She told the claimant she was not a “team player” and she was going to report the incident to Unit Supervisor Amy McDonough. The claimant testified she felt she was too busy to call other employees to come in and that she endangered patients by making calls, doing any other clerical work or answering call lights when she was doing her job of watching heart monitors but she admitted she did have access to the schedule and employee phone numbers and there are no state or other regulations that require monitor technicians to only watch monitors when they are working. Additionally, the employer testified it did not expect the claimant to neglect her monitoring duties but stated she could make the calls as the opportunity presented itself while she was watching the monitors. After the confrontation with Ms. Wickman the claimant knew it would be “an issue” so she prepared a written statement for Ms. McDonough. On December 6, 2007, Ms. McDonough and Director of Cardiology Services

Shaunda Calkins met with the claimant about the incident November 15, 2007, and gave her a Level One corrective action form. The claimant became very upset and said the employer needed to "be prepared for the consequences." The employer was not sure what the statement meant but felt it was threatening in nature. The claimant was "very frustrated" and said she was going to get a Coke. She left the room slamming the door in the process. She returned a short time later and told the employer if "that was the way (she) was going to be treated (she) would (rescind her) offer to work Christmas and New Year's." The employer stated it was going to consult with human resources and the claimant was suspended December 8 and 9, 2007. She was next scheduled to work December 13, 2007, at which time she was presented with a Level One and Level Four corrective action and her employment was terminated. The claimant had not received any previous warnings prior to December 6, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of

unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant testified she did not refuse a directive from Ms. Wickman November 15, 2007, the administrative law judge disagrees because she not only said it was not her “responsibility to call labor for the organization” but did not make any further calls after being asked to do so by Ms. Wickman, even though she did have access to employee phone numbers. Consequently, the Level One corrective action issued December 6, 2007, seems appropriate. The claimant’s job was not in jeopardy because of a Level One corrective action, however. Her behavior when issued the warning resulted in the termination of her employment because during that meeting she stated the employer should “be prepared for the consequences.” The employer was not sure what that statement meant but took it as a threat. Although the claimant denies making the statement, the employer’s two witnesses were credible in their testimony about the situation. Their interpretation of the statement as a threat is less persuasive, however, because the claimant seemingly was indicating she might seek legal action because of the warning which might be a threat but could just as easily be viewed as a simple statement of fact. The claimant was upset and acted inappropriately during the meeting and that likely contributed to the employer’s belief that her comment was a threat but making a statement of fact and making a direct threat of some type of physical repercussion are two different things. While the claimant acted inappropriately with the house manager June 15, 2006, the administrative law judge does not consider two outbursts in one and one-half years a pattern. Consequently, although not condoning the claimant’s behavior November 15 or December 6, 2007, the administrative law judge cannot conclude that her actions rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The January 3, 2007, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css