

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

CAROL A CONRY  
801 CHESNUT ST  
LA PORTE CITY IA 50651-1318

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

Appeal Number: 06A-UI-06894-HT  
OC: 06/28/06 R: 03  
Claimant: Appellant (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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Carol Conry, filed an appeal from a decision dated June 28, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 27, 2006. The claimant participated on her own behalf. The employer, Accessible Medical Staffing (AMS), participated by Lead Staffing Coordinator Karey Sego.

#### 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: Carol Conry was employed by AMS from August 25, 2004 until May 21, 2006. She was a temporary worker at nursing home facilities in her area.

Beginning in June 2005 the employer counseled the claimant regarding complaints from the clients. She was tardy to work, was not a "self starter" and had to be given too many detailed instructions. It was felt she was rude to staff members and residents, took extended breaks and more of them than she was entitled to, and her job performance was poor. She was given a final verbal warning on May 19, 2006, by the AMS administrator and was told she was "hanging by a thread" because there were only a few facilities left in her area who were willing to have her work for them.

On May 21, 2006, she was assigned to Colonial Manor for the 2:00 p.m. to 10:00 p.m. shift. She arrived over an hour late, and then took a 40-minute break. The facility notified AMS that the claimant had been verbally abusive to a resident she was trying to "force feed" when she asked him if he "wanted to wear it." The client said the claimant had a "bad attitude" and did not want her back at any time.

This was the last facility in the claimant's area to which she could be assigned and the employer notified her it could no longer give her any assignments.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of her unemployment benefits.

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.

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 claimant had been advised her job was in jeopardy as a result of the numerous complaints of misconduct from clients. She was also advised there were very few places which would be willing to accept her. Instead of improving her performance and attitude, Ms. Conry continued with the same type of behavior about which the clients had complained until there was no place willing to have her work in their facility. The employer acknowledged that a few complaints here and there are not unusual, but the extensive number of complaints, about the same problems, and from every facility at which Ms. Conry had worked, convinced AMS the problem was with the claimant, not the clients.

Ms. Conry acknowledged being late to her assignments and not always getting along with the staff. However, she maintained AMS was fabricating the other allegations but the administrative law judge does not find this assertion to have any foundation. The employer is required to provide acceptable staff to its clients and the claimant was simply not acceptable to anyone because of her poor work performance, bad attitude, unacceptable behavior and inability to work with residents or staff. She jeopardized the employer's relations with its clients and this is conduct not in the best interests of the employer. The claimant is disqualified.

#### DECISION:

The representative's decision of June 28, 2006, reference 01, is affirmed. Carol Conry is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/pjs