

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAN I MULLEN
Claimant

APPEAL NO. 12A-UI-11074-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALEGENT HEALTH
Employer

OC: 08/19/12
Claimant: Appellant (3)

Section 96.5-2-a – Discharge
871 IAC 26.8(5) – Decision on the Record

STATEMENT OF THE CASE:

Jan Mullen filed a timely appeal from a representative's decision dated September 10, 2012, reference 01, which denied unemployment insurance benefits finding that the claimant left employment without good cause. After due notice was provided, a telephone hearing was scheduled for October 11, 2012. The claimant, the appellant herein, did not respond to the notice of hearing. Appearing on behalf of the employer was Alyce Smolsky, Hearing Representative and witness, Beth Spieker, Clinic Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Jan Mullen was employed by Alegent Heath from December 10, 2001 until August 8, 2012 when she was given the option of resigning or being discharged from employment. The claimant resigned in lieu of being discharged. Ms. Mullen was employed as a full-time registered nurse and was paid by the hour. Her immediate supervisor was the clinic manager, Beth Spieker.

A decision was made to terminate Ms. Mullen based upon a final incident during which the claimant had failed to perform an essential job task by reporting lab results to doctors on lab results that had been received for two separate patients. Because this was considered to be a serious breach of clinic policy and potentially jeopardized the patients a decision was made to terminate Ms. Mullen from her employment. The doctors had made specific complaints about the failure of Ms. Mullen to contact them and the claimant's failure to do so.

Because the claimant had been previously warned and had received a final warning on April 20, 2012, a decision was made to terminate Ms. Mullen from her employment. The claimant chose to resign in lieu of being discharged. At the time of the claimant's job separation the claimant had not made any allegations of being treated improperly or being harassed.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes conduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that the claimant quit her employment with Alegent Heath on August 8, 2012 in lieu of being discharged at that time for failure to perform essential job duties after being previously warned. There being no evidence to the contrary the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated September 10, 2012, reference 01, is affirmed as modified. The portion of the determination disqualifying the claimant from receiving unemployment insurance benefits is affirmed. The portion of the determination finding that the claimant voluntarily quit is modified to find that the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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