

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

BECKY S HALL  
708 – 3<sup>RD</sup> ST  
PO BOX 122  
PRINCETON IA 52768

ALEX J BRANDTNER DDS MS  
5108 JERSEY RIDGE RD  
DAVENPORT IA 52807

Appeal Number: 04A-UI-09408-HT  
OC: 08/01/04 R: 04  
Claimant: Respondent (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, 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 employer, Alex J. Brandtner DDS MS (Brandtner), filed an appeal from a decision dated August 24, 2004, reference 01. The decision allowed benefits to the claimant, Becky Hall. After due notice was issued, a hearing was held by telephone conference call on September 23, 2004. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Business Manager Lois Hanson.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Becky Hall was employed by Alex J. Brandtner from June 3 until July 21, 2004. She was a full-time dental assistant on her 60-day probationary period. When she interviewed for the job with Business Manager Lois Hanson, she stated she was proficient in “four-handed dentistry,” a technique of handing instruments to the dentist, could take x-rays and could do “rubber cup prophies,” a minor dental cleaning procedure. At the time of hire Ms. Hanson went over the attendance policy and stressed the importance of being to work as scheduled to avoid putting extra work on the other staff, and to report any absences directly to her.

The claimant was absent due to an ill child on June 14, 2004. She was given a verbal warning on June 15, 2004, by Ms. Hanson, who stressed the importance of having a “back up plan” to provide child care. On June 22, 2004, the claimant was given another verbal warning for violating medical ethics. The parent of a patient had said the child was ill and it was likely due to medication prescribed by another dental specialist. The claimant said the medication was too strong for a child and that Dr. Brandtner would “prescribe something else.” This was not appropriate and could have resulted in some liability for the employer. Ms. Hanson counseled the claimant and told her she should only have informed the parent to bring her concerns to the attention of the dentist.

Throughout the course of her probationary period it became evidence that Ms. Hall could not take x-rays, or do the other dental procedures she had said she was capable of performing. In addition, she did not know how to chart correctly and refused to follow the required rotation, that is, taking a patient as soon as she was finished with the last one. This was especially evident toward the end of the day when she would claim to have too many other things to do. She had been advised as to the proper way to interact with the pediatric patients but did not follow the required procedures after being instructed.

The final incident occurred on July 20, 2004, when Ms. Hall arrived for work and told her fellow employees that it was too nice a day and she “should be by the pool.” At 11:00 a.m. the claimant told Ms. Hanson she had to go home because her son was having stomach cramps. The business manager told the claimant to call her at 1:00 p.m. and let her know if she was coming back. Ms. Hall did not do so, but rather left a message on the voice mail of a co-worker’s cell phone, which was out in that co-worker’s vehicle in the parking lot. The message was not received until the other person was going home for the night.

The claimant was discharged by Ms. Hanson on July 21, 2004. She was offered the opportunity to stay through August 3, 2004, but she declined.

Becky Hall filed a claim for unemployment benefits with an effective date of August 1, 2004. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant misrepresented her skills to the employer at the time of hire. This is not a mere inability to do the job to the employer's satisfaction, but misleading the employer in order to obtain the job. In addition, she did not follow the proper office procedure, take her fair share of the patients on her rotation, and did not properly notify the employer of her continuing absence on July 21, 2004. This is a violation of the duties and obligations the employer has the right to expect of an employee and is conduct not in the best interests of the employer. She is disqualified.

DECISION:

The representative's decision of August 24, 2004, reference 01, is reversed. Becky Hall is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/b