

**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**

**SARA E SMITH  
2722 MOYER  
DES MOINES IA 50310**

**MERCY HOSPITAL  
ATTN HUMAN RESOURCES  
1055 – 6<sup>TH</sup> AVE STE 105  
DES MOINES IA 50314**

**Appeal Number: 04A-UI-02104-CT  
OC: 01/18/04 R: 02  
Claimant: Appellant (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 for Misconduct

STATEMENT OF THE CASE:

Sara Smith filed an appeal from a representative's decision dated February 16, 2004, reference 02, which denied benefits based on her separation from Mercy Hospital. After due notice was issued, a hearing was held by telephone on March 16, 2004. Ms. Smith participated personally and offered additional testimony from Jo Fisk. The employer participated by Kelly Enyart, Employee Relations Coordinator; Eric Johnson, Medical Supervisor; and Amy Barth, Director.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Smith was employed by Mercy Hospital from May 8, 1989 until January 23, 2004. She was employed full time as a polysomnography technician. She was discharged as a result of a patient complaint received on December 18, 2003. Ms. Smith was away from work from December 19 until January 23.

The complaint received by the employer on December 18 stated that Ms. Smith had over-inflated the patient's blood pressure cuff. The patient did not voice any discomfort during the procedure but, after experiencing numbness in the extremity later on, was told by his wife that it was due to the blood pressure cuff being over-inflated. The patient who complained was at the hospital to participate in a sleep study. He complained that the mask placed over his face during the study was leaking air into his eyes. He indicated in his complaint that he had attempted to tell Ms. Smith of the problem but was not able to due to the mask being in place. Ms. Smith was monitoring the patient away from the room. At one point, she observed that he was having trouble with the mask and went to readjust it for him. The essence of the patient's complaint was that Ms. Smith did not provide him with assistance in making sure the mask was positioned properly so that air would not blow in his eyes. There is a certain amount of leakage from the mask that is unavoidable. As a result of this complaint, Ms. Smith was discharged when she returned to work on January 23, 2004.

In making the decision to discharge, the employer considered other disciplinary actions taken against Ms. Smith. On September 9, 2003, she was suspended for one day because of her involvement in an argument with two coworkers. The argument concerned who would be eligible to go home early due to low census. The argument did not take place in an area where it could be overheard by patients. All three parties were disciplined. On February 24, 2003, Ms. Smith received a written warning because she used profanity towards a coworker. She told the coworker to get off her "fucking ass." Ms. Smith received a written warning on February 11, 2003 because of a patient complaint. The patient complained that she was rude in telling her at approximately 9:45 p.m. that she had to go to bed and not finish her reading. Patients in the sleep study are usually to be in bed by 10:00 p.m. The patient also complained that Ms. Smith told her that she could not tell her anything about her sleep study. Ms. Smith was not authorized to provide the patient with the requested information. On November 7, 2002, Ms. Smith received a verbal warning for using her cellular telephone at work.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Smith 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). Before a disqualification from benefits may be imposed, the evidence must establish that the final act which precipitated the discharge constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). In the case at hand, the final incident which triggered Ms. Smith's discharge was the patient complaint received on December 18. Ms. Smith was not aware during the procedure that the patient was feeling any discomfort from the blood pressure cuff. Therefore, she had no opportunity to take alternative measures to relieve his discomfort. She was responsive to his needs when he had complaints regarding his mask leaking. The evidence failed to establish that Ms. Smith did

anything inappropriate with regard to the patient. The fact that a patient complains does not, in and of itself, establish an act of misconduct.

The next most prior disciplinary action was on September 9, 2003 when Ms. Smith engaged in an argument with coworkers. This incident was too remote in time to be considered a current act of misconduct in relation to the January 23, 2004 discharge. Inasmuch as the evidence failed to establish a current act which constituted misconduct within the meaning of the law, no disqualification may be imposed. 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 cited herein, benefits are allowed.

DECISION:

The representative's decision dated February 16, 2004, reference 02, is hereby reversed. Ms. Smith was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/b