

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FELICIA M NICKELL**  
Claimant

**APPEAL NO. 12A-UI-11552-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMMERCIAL RESOURCES INC**  
Employer

**OC: 08/19/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated September 12, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on October 22, 2012. Claimant participated. The employer participated by Rachael Hoffman, Human Resource Manager, and Lisa Crisp, Director of Nursing.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Felicia Nickell was employed by the captioned employer d/b/a Continental Care Center from July 27, 2010 until August 12, 2012 when she was discharged for leaving work without authorization on August 11, 2012. Ms. Nickell was employed as a full-time certified nursing assistant and was paid by the hour. Her immediate supervisor was Lisa Crisp.

The claimant was discharged after she left work without authorization on August 11, 2012. Claimant had requested to get off work at 2:00 p.m. that day and was told that she would be authorized to do so only if enough staff were present. Prior to leaving the claimant was specifically told that there were insufficient staff and her request to leave was denied. Claimant left work nevertheless without authorization and was discharged from employment. Claimant had previously been warned regarding her attitude and had been placed on notice that additional issues regarding her attitude could result in her termination from employment.

It is the claimant's position that she did not "think that she should have to stay."

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct 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.

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. of Appeals 1992).

The evidence in the record establishes that the claimant was discharged for willfully disregarding her employer's interests and standards of behavior by walking off the job in mid shift on August 11, 2012 although she had been specifically instructed not to do so. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated September 12, 2012, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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