IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANGELA M KLATT
Claimant

MERCY HOSPITAL
Employer

APPEAL NO. 09A-UI-01522-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/21/08 R: 02
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mercy Hospital filed an appeal from a representative's decision dated January 21, 2009, reference 01, which held that no disqualification would be imposed regarding Angela Klatt's separation from employment. After due notice was issued, a hearing was held by telephone on February 19, 2009. Ms. Klatt participated personally. The employer participated by Cheryl Dahl, Clinical Supervisor; Phil Blumberg, Department Director; and Eddie Brown, Human Resources Business Partner. Exhibits One through Seven were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Klatt was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Klatt was employed by Mercy Hospital from October 4, 2004 until December 19, 2008. She worked full time as a radiation therapist. Her discharge was prompted by a violation of the employer's policy prohibiting the use of profanity on the job.

On December 17, Ms. Klatt asked a coworker, Ryan Knight, about the identity of a patient who was in the waiting room. Mr. Knight commented something to the effect, "if you were here, you'd probably know." Ms. Klatt felt he was commenting on her attendance and became angry. She said to Mr. Knight, "are you really that fucking stupid?" The comment was not made within earshot of any patients but was overheard by a third worker. The supervisor acknowledged during the hearing that profanity is used in the workplace without repercussions. The comment was reported to management and resulted in Ms. Klatt being discharged on December 19, 2008.

In making the decision to discharge, the employer also considered other disciplinary actions taken against Ms. Klatt. She had received a written warning on January 8, 2008 concerning unacceptable attendance. She had received another written warning on July 8, 2008 because

she was absent on June 30. She called on that date to report that she would be an hour or two late because she was having a headache. However, she did not report for work or re-contact the employer regarding her intentions. The employer did not document any attendance issues after June 30, 2008.

REASONING AND CONCLUSIONS OF LAW:

Ms. Klatt was discharged from employment. An individual who was discharged is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the final conduct that triggered the discharge constituted an act of misconduct.

In the case at hand, Ms. Klatt was discharged for violating the employer's policy regarding the use of profanity at the workplace. The parties do not dispute that the employer does, in fact, have a written rule prohibiting the use of profanity. However, a rule that is not uniformly enforced is, in essence, no rule at all. The supervisor had heard other employees using the word "fuck" in the workplace but did not take any steps to administer discipline. The fact that the supervisor took no action would lead subordinates to believe that such language would be tolerated. Inasmuch as the profanity used by Ms. Klatt had been allowed in the department, she could not have known that her statement of December 17 would lead to discharge. She did not deliberately and intentionally violate the employer's standards as she knew them to be.

For the above reasons, the administrative law judge concludes that the employer failed to establish that the final act constituted an act of misconduct as that term is defined by law. The next most adverse conduct on Ms. Klatt's part occurred on June 30, 2008 when she failed to give notice that she would be absent rather than late as previously reported. An incident that occurred on June 30 would not represent a current act in relation to the discharge that occurred on December 19. See 871 IAC 24.32(8).

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause for discharging Ms. Klatt, conduct that might warrant a discharge from employment will not necessary support a disqualification from job insurance benefits.

DECISION:

The representative's decision dated January 21, 2009, reference 01, is hereby affirmed. Ms. Klatt was discharged by Mercy Hospital but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

cfc/css