

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CASSANDRA L KEESLING**  
Claimant

**APPEAL NO. 07A-UI-07052-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL**  
Employer

**OC: 07/01/07 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 July 19, 2007, reference 01, which held that no disqualification would be imposed regarding Cassandra Keesling's separation from employment. After due notice was issued, a hearing was held by telephone on August 6, 2007. Ms. Keesling participated personally. The employer participated by Patti Steelman, Employee Relations Compliance Coordinator, and Sonja Ranck, Recovery Room Director. Exhibits One, Two, and Three were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Keesling 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. Keesling was employed by Mercy Hospital from July 7, 1998 until June 26, 2007 as a full-time nurse. She last worked full time in the recovery room. On May 25, she had a brief verbal exchange with another employee, Christina Blake, over the location of a patient Ms. Keesling was looking for. One coworker, Allie, indicated the patient was in slot 17. Ms. Blake said the patient in slot 17 was not a breast biopsy as it was a male. Ms. Keesling then showed her the paperwork to verify that it was a breast biopsy. As she was turning around with the paperwork in her hands, Ms. Keesling inadvertently struck Ms. Blake on the chin. There was no injury as a result. The paperwork consisted of a packet of approximately ten pages stapled together.

The employer was made aware of the incident on the same day. On June 8, the employer requested a written statement from Ms. Keesling. Since she was scheduled to be on vacation from June 11 through June 15, she was told she could submit the statement after her return. She provided a written statement on June 19. The employer began talking to other employees on May 25 to determine if there were any witnesses to the incident. The employer spoke with five individuals who worked in the area but none had actually witnessed the exchange between Ms. Keesling and Ms. Blake. As a result of the incident, Ms. Keesling was discharged on

June 26, 2007. She had not engaged in similar conduct in the past. The incident of May 25 was the sole reason for the discharge.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment 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 discharge was predicated on a current act of misconduct. See 871 IAC 24.32(8). In the case at bar, the incident caused the discharge occurred on May 25 but Ms. Keesling was not discharged until a month later. The employer spoke to five individuals, four of whom worked the same shift as the person conducting the investigation. The employer obtained written statements from two individuals, the two participating in the incident at issue. During the interim, Ms. Keesling continued to perform her normal job with no indication she was being considered for discharge.

The employer's one-month delay in discharging Ms. Keesling was not justified by the investigation, given the limited nature of the investigation. It was not the type of incident that should take four weeks to investigate. Given the lapse of time, the administrative law judge concludes that the discharge was not triggered by a current act of misconduct. Even assuming the administrative law judge was to find the incident current, the evidence still failed to establish that Ms. Keesling deliberately and intentionally struck Ms. Blake. Based on the only first-hand description of the incident given under oath, the administrative law judge concludes that the touching was inadvertent. Ms. Blake, who still works for the hospital, was not offered as a witness during the hearing. Nor was her written statement offered as an exhibit. Ms. Keesling did not have a history of striking coworkers or having verbal disputes with them.

While the employer may have had good cause to discharge Ms. Keesling, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, the administrative law judge concludes that the employer failed to satisfy its burden of proving disqualifying misconduct. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated July 19, 2007, reference 01, is hereby affirmed. Ms. Keesling was discharged by Mercy Hospital but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

---

Carolyn F. Coleman  
Administrative Law Judge

---

Decision Dated and Mailed

cfc/css