

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA WRIGHT
Claimant

APPEAL NO: 08A-UI-00244-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

COVENANT MEDICAL CENTER
Employer

**OC: 12-02-07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 2, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 23, 2008. The claimant participated in the hearing. Lisa Swanson, Human Resources Representative and Karen Finn, Central Supply Supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time processing technician for Covenant Medical Center from June 28, 2004 to December 7, 2007. On March 1, 2007, the claimant received a verbal warning for attendance and a written warning for behavior after she was overheard by her supervisor being sarcastic to another employee on the phone and continued being condescending before hanging up. The employer determined her behavior was inappropriate and told her if someone is treating her disrespectfully on the phone she should refer the situation to her supervisor. On June 19, 2007, the claimant received a performance evaluation and was told she was not open to change, was verbally threatening and task driven and that she needed to respect authority and her co-workers' right to work in a non-threatening work place. On August 21, 2007, she received a final written warning for harassment, insubordination and unacceptable communication after she told a co-worker that the co-worker "could not talk and work at the same time and should just go home." The co-worker said the claimant was always eating cookies at work and a verbal altercation ensued and the other employee went to management. The claimant was warned because she did not take her complaint about her co-worker to her supervisor instead of confronting the co-worker directly. On December 3, 2007, the Central Supply second shift leader complained there were issues in the department the previous evening when a new employee was training and the operating room called for someone to take the empty tanks off the dumb waiter. Other employees waited for the claimant to return from break and the claimant became upset and loudly proclaimed that others should have been

doing the tanks while she was gone and it “just wasn't fair.” She continued complaining and said, “That's how you all are around here. I'll remember that.” The last incident occurred December 4, 2007, when the employer received complaints from cafeteria employees who stated the claimant was complaining about her portion size and demanding fresh French fries. The cafeteria staff offered to weigh the claimant's food to show her it was the correct portion but told her it was not allowed to make new fries until the others were gone and the claimant said, “All you people stick together.” The cashier said the claimant refused to pay full price for a large soda by taking a large and telling the cashier to charge her for a small. The claimant had been accused of being rude to the dietary staff in the past. Her supervisor noted a continuing pattern of challenging behavior and offered the claimant EAP services on two occasions but believed the claimant declined both times. The claimant testified she went one time but was upset because the counselor asked “personal questions.” She further testified she was aware her voice was loud and other employees were intimidated by the tone of her voice and because she became upset or “mad” easily and was not always professional but denies that she ever disrespected her co-workers. After reviewing all of the above-stated incidents the employer terminated the claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant did display a negative attitude and intimidated not only her immediate co-workers but also dietary department employees as well. She recognized that her voice was loud, unprofessional and that she became upset easily, all of which intimidated her co-workers and made them feel uncomfortable, if not unsafe, at work. The employer offered the claimant the chance to go to EAP twice but she only attended once, complaining that the counselor asked personal questions, although she did ask why the employer did not send her back to EAP a third time when she was terminated. Consequently, because the claimant was aware of how her voice and behavior affected others, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The January 2, 2008, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs