

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA S LEE
Claimant

APPEAL NO. 07A-UI-09224-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER
Employer

OC: 08/26/07 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 27, 2007, reference 01, decision that denied benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 16, 2007. The claimant participated personally. The employer provided a telephone number but could not be reached at that number. The administrative law judge left a message for the employer, but the employer did not return the administrative law judge's call before the end of the hearing.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on May 21, 2007, as a full-time inpatient rehabilitation nurse. She was absent approximately four times due to a properly reported illness. On July 29, 2007, the claimant took her mother-in-law for emergency medical treatment. The claimant asked her daughter to notify the employer. Later, the claimant discovered her daughter did not contact the employer. The claimant spoke to the employer immediately.

On or about August 6, 2007, the employer asked the claimant if she would consider working in a different area. The claimant agreed and the employer said she would call the claimant back. The claimant did not hear from the employer and the employer did not schedule the claimant to work. The claimant tried repeatedly to reach the employer and left numerous messages. The employer did not return any calls. The claimant assumed she was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not discharge the claimant for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer did not participate in the hearing. No evidence was presented at the hearing of misconduct. The claimant was discharged. Misconduct was not proven. Benefits are allowed.

DECISION:

The representative's September 27, 2007 decision (reference 01) is reversed. The employer discharged the claimant. Misconduct has not been proven. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw