

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRY K WAGNER**  
Claimant

**APPEAL NO. 09A-UI-18399-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COVENANT MEDICAL CENTER**  
Employer

**OC: 11/08/09**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Terry Wagner, filed an appeal from a decision dated November 30, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 19, 2010. The claimant participated on her own behalf and was represented by Dave Nagle. The employer, Covenant Medical Center, participated by Director of Human Resources Missy Santman, ICU Manager Denise Jackson, Cardio Pulmonary Service Line Director Garland McDonald and was represented by Jay Heitman.

**ISSUE:**

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

**FINDINGS OF FACT:**

Terry Wagner was employed by Covenant Medical Center from June 7, 1993 until November 5, 2009 as a full-time registered nurse in the intensive care unit. During the course of her employment the claimant received progressive disciplinary action regarding her conduct. A verbal warning was given January 21, 2008, for how her attitude was perceived by other employees in that it appeared she refused to accept she could be wrong about anything. On February 28, 2008, she received a written warning because of a complaint from a family member about a comment she had made about that family member. At that time it was recommended she contact the Employee Assistant Program to help her deal with some of her issues. A final written warning was given September 28, 2008, for an argument with a co-worker at the intensive care unit nursing station.

On October 21, 2009, the human resources department and the vice president of medical affairs received an e-mail complaint from Frank Decoreux, the director of Iowa Donor Network (IDN). This was regarding an incident with Ms. Wagner on September 20, 2009, when employees of IDN were in the ICU because of a potential organ donor. It was admittedly a stressful time because the patient's care had been transferred back and forth between Covenant Medical Center and IDN because of the patient's status, the inability to contact family members and the

resulting chaos about whether certain medical procedures could be performed. Ms. Wagner was overheard by IDN nurses to state she felt “this situation is a fucking mess and no fucking way should it happen this way.”

The employer investigated by Director of Human Resources Missy Santman and ICU Manager Denise Jackson meeting with Mr. Decoreux on October 28, 2009. It was established Ms. Wagner was the “Terry” complained of in the e-mail. On November 4, 2009, Ms. Jackson and Cardio Pulmonary Service Line Director Garland McDonald met with the claimant about the complaint.

Ms. Wagner admitted she had likely said those words but insisted she had “said them to herself” and no one else could have heard her. She could not explain why, if no one else could have heard her, the staff from IDN knew what she had said that day. The employer notified her the next day she was discharged.

### **REASONING AND CONCLUSIONS OF LAW:**

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 knew her job was in jeopardy as a result of her attitude and personal interaction problems. She had been counseled according to the employer's progressive disciplinary policy and had reached the final step when she used vulgarity in the hospital ward. She admits this.

The claimant argues it was in isolated incident of vulgar language where decorous language is not required. *Budding v. IDJS*, 337 N.W.2d 219, 223 (Iowa App. 1983). But it appears decorous language *is* required in a hospital intensive care unit. More applicable in this case is *Warrell v IDJS*, 356 N.W.2d 587 (Iowa App. 1984.) The claimant had been placed in a probationary status due to previous problems and was discharged for a final incident of vulgarity in the work place. The claimant also cited *Diggs v. EAB*, 478 N.W.2d 432 (Iowa App. 1991). The administrative law judge does not consider this to be applicable as it dealt with a physical assault off premises during the claimant's lunch hour.

The record establishes the claimant had been warned her job was in jeopardy as a result of her poor attitude, not because of any failure to perform her nursing duties appropriately. The final incident was serious vulgarity in the hospital while on duty, in an area where she was overheard by staff from the IDN and potentially could have been heard by other staff, patients and their family members. Such conduct cannot be conducive to creating a professional atmosphere or encouraging confidence in patients and their family members. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of November 30, 2009, reference 01, is affirmed. Terry Wagner is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/pjs