

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY J FAHEY
Claimant

APPEAL NO. 11A-UI-07405-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNTRY CLINIC MEDICAL SERVICES INC
Employer

OC: 05/08/11
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Amy J. Fahey filed a timely appeal from an unemployment insurance decision dated May 27, 2011, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held June 29, 2011, with Ms. Fahey participating. Clinic Manager Dawn Green and ARNP Barbara Heck participated for the employer, Country Clinic Medical Services, Inc. Employer Exhibit 1 was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Amy J. Fahey was employed as a certified medical assistant by Country Clinic Medical Services, Inc. from January 2011 until she was discharged May 6, 2011. The sole incident leading to the discharge occurred on May 5, 2011. Ms. Fahey ordered two stereotactic breast biopsies, mildly invasive procedures performed by a radiologist, without authority from the clinic's physician or Advance Registered Nurse Practitioner. Ms. Fahey knew that she did not have authority to order the tests herself. She intended to confer with ARNP Barbara Heck after the fact and called to cancel to the biopsies if Ms. Heck did not agree. However, Ms. Fahey did not speak with Ms. Heck on May 5, leave a note for her when she left for the day, or speak to her on the morning of May 6, 2011.

Ms. Heck learned of the situation later on May 5, 2011, from other support staff members. She referred the matter to Clinic Manager Dawn Green, who then spoke with the clinic's physician. Ms. Green discharged Ms. Fahey on the physician's order on May 6, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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 essential facts of this case are not in question. Ms. Fahey ordered two biopsies, although she was not authorized to do so. According to the definition of misconduct set forth above, isolated instances of poor judgment are not considered to be misconduct. The facts of this case, however, establish that Ms. Fahey did not have authority to exercise judgment in the scheduling of biopsies. This was beyond the scope of her certification as a medical assistant. Benefits are withheld.

DECISION:

The unemployment insurance decision dated May 27, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw