

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANN HORN
Claimant

APPEAL NO: 08A-UI-05689-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 05-18-08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 10, 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 July 7, 2008. The claimant participated in the hearing. Patti Steelman, Employee Relations Compliance Coordinator and Lee Hoover, Director of NICU, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 critical care assistant for Mercy Hospital from November 3, 1988 to May 19, 2008. On May 13, 2008, she was upset with the secretary who was training her replacement because she felt her suggestions were being ignored. The claimant "flipped her off" and then said, "Maybe I should just say fuck it and look to get out." She was in tears at the time she made the remark and regrets that it happened. There was an on-going problem regarding visitors in the NICU and the claimant felt it was her responsibility to encourage visitors to comply with the rules and regulations involving visitors and sterile clothing. She became frustrated and later in the shift called the charge nurse to the front desk and then started yelling at her stating, "You guys need to start explaining the visiting policy better. I'm sick of always having to be the bad guy around here. I'm the only one who ever has to tell the parents the way we do things and turn them away "(Employer's Exhibit One). She pointed her finger in the charge nurse's face and yelled, "You need to talk with this family and get them straightened out on how we do things around here "(Employer's Exhibit One). As the claimant was yelling at the charge nurse the patient's grandmother walked by. One of the other nurses walked up to give the claimant some forms and the claimant "ripped" them from her hand and began tearing off her copy. The claimant started yelling at the nurse saying, "You need to tell them what our visiting policy is around here. I'm sick of you girls always expecting me to explain everything" (Employer's Exhibit One). Two other families as well as staff members complained that they

could overhear the claimant's outburst. The claimant apologized to the patient's grandmother in the elevator and called the charge nurse at home to apologize for her behavior. The claimant received a previous verbal warning November 21, 2007, for inappropriate conversations but had not received any other warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant obviously had a bad day May 13, 2008, and should not have talked to the secretary and used profanity in that manner or yelled at the charge nurse as well as the other nurse especially within earshot of patients' families and other workers, she did apologize and had a nearly unblemished 20-year work record. Her actions May 13, 2008, were an aberration and as such

fall within the category of "isolated incident" rather than disqualifying job misconduct. Consequently, while not condoning the claimant's behavior, the administrative law judge must conclude that her actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 10, 2008, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs