

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LESLIE A MILLER**

Claimant

**VETERANS MEMORIAL HOSPITAL**

Employer

**APPEAL NO: 10A-UI-13025-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/15/10**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated September 15, 2010, reference 01, that held she was discharged for misconduct on August 16, 2010, and benefits are denied. A telephone hearing was held on November 9, 2010. The claimant, her husband, John, and Attorney, Anne Loomis, participated. Erin Burns, HR Director, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment as a full-time RN/surgical nurse on January 12, 2009, and last worked as surgical coordinator for the employer on August 16, 2010. The claimant had a job share agreement with employee Goltz.

The claimant received some performance coaching from her supervisor about her work. The claimant made a formal complaint against a surgeon to employer quality assurance in May 2010. The claimant supervisor issued a verbal warning to her on June 7 for job performance.

The claimant was issued a written corrective action on August 11 based on scheduling errors and patient complaints. The claimant signed for the warning, and she offered no written response on the form. The claimant left before completing her clinic work and threw her identification badge in the garbage. The claimant called in later that evening to report an absence from work for the following day, because she was upset about what happened that day.

The claimant and her husband went into work to confront employee Goltz on August 12. Claimant accused Goltz of spying on her and wanting her job. After the confrontation, Goltz immediately went to HR Director to report she was harassed. Goltz was visibly upset and crying.

The employer believed the claimant had harassed co-worker Goltz with verbal abuse. It also concluded the claimant had reported a false reason for absence since she came into work on August 12. The employer also noted the claimant left work early on August 11 after receiving a corrective action warning. The employer discharged the claimant for all of the reasons listed above on her next scheduled workday August 16.

## **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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on August 16, 2010.

The claimant and employer made numerous references to documents, warnings and notes that both sides failed to offer as evidence for this record. The employer testimony based on a personnel record is claimant was verbally coached and issued a written warning on June 7 for job performance errs. The claimant was issued a further warning on August 11 based on patient complaints due to scheduling errors. The claimant signed for the warning and offered no response.

After the discipline, the claimant left before the clinic work was completed that is an act of misconduct. The claimant compounded this act by calling in and offering a false reason for

missing work. Being upset is not an illness, and the claimant was well enough to go into work and confront her co-worker on the day she reported an absence due to illness. This misconduct became more serious when she confronted the co-worker with accusations that she was spying and wanting her job that might be reasonably be considered as harassment. The claimant contention her discharge is retaliatory based on her May complaint is without merit.

The employer reasons for discharge when considered as whole constitute job disqualifying misconduct.

**DECISION:**

The department decision dated September 15, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on August 16, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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