

August 2, 1999 until August 9, 2005. She was a full-time registered nurse. The job duties of a registered nurse include successfully completing and passing unit-required educational classes.

On October 2003 the claimant was transferred to the "resource pool" of nurses. This change meant there were new competency classes she had to take and complete because of new job duties. In April 2005 she was issued a performance improvement plan enumerating the classes and tests she had yet to pass. This was to be done in 90 days.

On June 13, 2005, the claimant received a written warning notifying her that she had yet to take and/or successfully complete any of the classes listed in the April warning. It notified her she had until July 27, 2005, to do this. On July 27, 2005, she was suspended because she had not yet completed any of the requirements of the improvement plan. The suspension would result in discharge if she had not completed the requirement as of August 5, 2005.

With this motivation the claimant was able to take and successfully complete all the required subjects and tests except a class on pacemakers. The reason for this is that the classes are not given on a weekly or monthly basis. The improvement plan in April 2005 did state she would take this class in the "fall of 2005." She was not able to take it prior to that as the next scheduled pacemaker class after April 2005 conflicted with another class she was required to take.

On August 9, 2005, Manager of Clinical Performance Improvement Steve Gibson sent the claimant a letter notifying her she was discharged. Ms. Johnson did not attempt to contact him and remind him of the agreement that she would not have to take the pacemaker class until the fall of 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant did manage to take and successfully complete all but one of the educational requirements of her job by August 5, 2005, as required. The only one remaining was a class which the April 2005 improvement plan specifically stated she would take "in the fall of 2005." This would lead a reasonable person to assume the person issuing the improvement plan recognized the class could not be taken any sooner and the claimant would be required to take the class as soon as it was available.

The employer did not present any evidence to dispute that the claimant had taken and successfully completed all of the requirements except the pacemaker class, and also could not dispute the terms of the improvement plan. Her failure to take that class was because she was discharged prior to being able to take it. This does not constitute misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of September 13, 2005, reference 01, is affirmed. Nancy Johnson is qualified for benefits provided she is otherwise eligible.

bgh/kjw