

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA L HOLM
Claimant

APPEAL NO. 11A-UI-14965-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

URBANDALE HEALTH CARE CENTER LLC
Employer

**OC: 10/16/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

Urbandale Health Care Center filed a timely appeal from an unemployment insurance decision dated November 9, 2011, reference 03, that allowed benefits to Sheila L. Holm. After due notice was issued, a telephone hearing was held December 14, 2011 with Ms. Holm participating. Director of Nursing Cheri Price and Human Resources Director Dawn Livingston testified for the employer which was represented by Dafney Michael of SCI Companies. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Sheila L. Holm was employed as an LPN by Urbandale Health Care Center from April 27, 2011 until she was discharged October 11, 2011. Ms. Holm worked weekends, normally working every second weekend. The final incident leading to her discharge occurred on September 17, 2011. Ms. Holm released a resident for emergency treatment without following proper procedures by contacting the resident's personal physician or notifying people internally. Ms. Holm met with Director of Nursing Cheri Price and Elanna Fultz about the matter on September 27, 2011. The matter was not fully resolved because Ms. Holm became upset and left the meeting. She was not scheduled to work again until the weekend of October 15 and 16, 2011. Ms. Holm exchanged e-mails and text messages with Ms. Price and with Human Resource Director Dawn Livingston after September 27, 2011. Ms. Price asked Ms. Holm to come to the employer's place of business on October 11, 2011 to discuss the matter further. Ms. Holm replied that she could not do so because she lacked child care for three small children. Ms. Price responded with a text message that Ms. Holm was discharged because of the events of September 17, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is not whether the employer was justified in discharging Ms. Holm. The question is whether she was discharged for misconduct as that term is defined for unemployment insurance purposes.

Iowa Code § 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 proof. See Iowa Code § 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). The final incident occurred on September 17, 2011; and the discharge occurred on October 11, 2011 over three weeks after the date of the incident. The administrative law judge concludes that the final incident was not a current act as of the date of discharge. Under these circumstances, disqualification is not appropriate.

DECISION:

The unemployment insurance decision dated November 9, 2011, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs