

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLA K RICHARDS
Claimant

APPEAL NO. 11A-UI-03636-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRINNELL REGIONAL MEDICAL CENTER
Employer

**OC: 02/13/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 15, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 14, 2011. Employer participated by Deb Nowachek, Chris Gilman and Sheryl Rutledge. Claimant participated with Michael DeGeorge as a witness. Claimant's Exhibit A and Employer Exhibit 1 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed from May 23, 2005 through January 25, 2011. She was employed as a cook. She was discharged from her employment for violation of a work rule related to reporting to work with an illness on January 14, 2011. Pursuant to state regulations the employer needed to ensure that employees not report to work in they were experiencing symptoms that might be indicative of an infection. Claimant began experiencing symptoms a few minutes before she left home to go to work. She advised the employer when she arrived of her condition. Claimant had been to a physician just three days before and had been advised that she did not have an infection but rather was likely experiencing medication related symptoms. Claimant was symptom free from that visit until January 14, 2011. Claimant assumed that she was simply experiencing more medication or post surgical symptoms on January 14, 2011.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The claimant reasonably believed that she was not experiencing infectious symptoms based upon her earlier doctor visit and as such the employer has not established a current act of misconduct. No disqualification is imposed.

DECISION:

The decision of the representative dated March 15, 2011, reference 01, is affirmed. Benefits are allowed, provided claimant is otherwise eligible.

Ron Pohlman
Administrative Law Judge

Decision Dated and Mailed

rrp/css