

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELSIE P WRIGHT

Claimant

APPEAL NO. 13A-UI-02342-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY HEALTH CORP

Employer

OC: 01/20/13

Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Elsie Wright, filed an appeal from a decision dated February 19, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 26, 2013. The claimant participated on her own behalf and was represented by Sarah Reindl. The employer, Trinity Health Corporation (Trinity), participated by Manager Debbie Abben, Human Resources Consultant Tenisha Woods, Team Lead Becky Ott and was represented by Mick Baughman. Exhibit A was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Elsie Wright was employed by Trinity from July 11, 2010 until January 14, 2013 as a full-time Medicare coding specialist. On January 7, 2013, Team Lead Becky Ott contacted Manager Debbie Abben around 8:30 a.m. to report about the claimant. Ms. Ott believed the claimant to be under the influence of alcohol. She smelled of alcohol, her behavior was erratic and her speech confused. She was taken to Health Works in Mason City, Iowa where she was given a breathalyzer test. The first results taken at 10:33 a.m. were .099 and the second test results at 10:59 a.m. were .0866. She also gave a urine sample for drug testing.

She was suspended pending the results of the drug test and review by the corporate office. On January 11, 2013, the corporate office reported to Ms. Abben the drug test was negative. But based on the results of the alcohol test she was to be discharged. The employer informed the claimant of the discharge by phone on Monday, January 14, 2013.

REASONING AND CONCLUSIONS OF LAW:

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.

g. Upon receipt of a confirmed positive alcohol test which indicates an alcohol concentration greater than the concentration level established by the employer pursuant to this section, and if the employer has at least fifty employees, and if the employee has been employed by the employer for at least twelve of the preceding eighteen months, and if rehabilitation is agreed upon by the employee, and if the employee has not previously violated the employer's substance abuse prevention policy pursuant to this section, the written policy shall provide for the rehabilitation of the employee pursuant to subsection 10, paragraph "a", subparagraph (1), and the apportionment of the costs of rehabilitation as provided by this paragraph.

The claimant did appear for work under the influence of alcohol. This is established by two breathalyzer tests performed by a qualified technician confirming she was in violation of at least Iowa law for being intoxicated. But disqualification may not be imposed only because the employer's policy does not comply with the provisions of Iowa Code chapter 730.5. There is nothing in the policy establishing the level of alcohol concentration which constitutes a violation. The policy also does not provide for rehabilitation even though it was offered to Ms. Wright, but only after she was discharged.

DECISION:

The representative's decision of February 19, 2013, reference 01, is reversed. Elsie Wright is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs