

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTEN K WEBER
Claimant

APPEAL NO. 07A-UI-04355-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AHF/KENTUCKY – IOWA
WILLOW GARDENS CARE CENTER**
Employer

OC: 04/01/07 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kristen Weber (claimant) appealed a representative's April 18, 2007 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Willow Gardens Care Center (employer) for conduct not in the best interest of her employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 16, 2007. The claimant was represented by Todd Weimer, Attorney at Law, and participated personally. In addition, the claimant's mother, Joanne Johnston, testified on behalf of the claimant. The employer participated by Greta Fisk, Director of Nursing, and Carolyn Boeding, Assistant Director of Nursing.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on July 19, 2006, as a part-time certified nurse aid. On March 13, 2007, the employer issued the claimant a written warning and one-day suspension for arguing with a co-worker. The co-worker told the employer that the claimant was yelling, cussing, and using the word "fuck" in front of residents. The claimant denied the allegations. She admitted she used the words "god damned lie". The co-worker was the person who was yelling and using profanity.

On March 14, 2007, the claimant was surrounded by co-workers when she arrived at work. The co-workers thought the claimant told the employer they were watching television rather than working. The claimant had not. The co-workers harassed the claimant. The claimant had complained about her co-workers in the past. The Director of Nursing told her to stay away from her co-workers. On March 16, 2007, the employer terminated the claimant but did not indicate a reason for the termination.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the claimant's testimony to be more credible because the employer did not offer firsthand testimony to any of the events for which the claimant was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's April 18, 2007 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw