

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH E CURL-TROST**  
Claimant

**APPEAL NO. 13A-UI-12110-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROADLAWNS MEDICAL CENTER**  
Employer

**OC: 09/29/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 17, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on November 20, 2013. Claimant participated. Employer did participate through (representative) Julie Kilgore, Vice President Human Resources and Susan Kirstein, Chief Nursing Officer. Claimant's exhibit A was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a unit clerk beginning on November 19, 2001 through September 21, 2013 when she was discharged. The claimant was given a performance warning on August 23 that put her on notice that she was not meeting the employer's expectations with regard to her attendance. She knew that her continued tardiness to work was placing her job in jeopardy. She was given a warning for poor job performance on September 13. September 13 was her supervisor's last day at work. While the supervisor told her she did not want to fire her, the supervisor could not promise any employee that no matter what they did they would not be fired. At her final warning, the claimant was specifically told that she needed to make major improvements. On September 19 numerous staff and patients complained about how the claimant was treating them. The claimant hung up on coworkers and patients, did not follow proper procedures for admitting patients and was rude to others. On both September 18 and 19 she did not properly sign in on the time keeping system. The claimant had many warnings prior to her discharge and would briefly improve then fall back into the same pattern of behavior. After receiving the complaints from numerous coworkers on September 19, the employer investigated and when the claimant returned for her next work shift on September 21 she was discharged.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant was given warnings about both her poor attendance and her failure to adequately perform her job functions. The administrative law judge finds the employer's allegation of events more persuasive. The claimant had a pattern of improving for short periods of time following reprimands. Her former supervisor warned her on her last day of employment, September 13, that she needed major improvement or she faced termination. Claimant's repeated failure to accurately perform her job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

**DECISION:**

The October 17, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs