

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIDOSAVA KUBURA
Claimant

APPEAL NO: 10A-UI-16364-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 10-24-10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 17, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 24, 2011 and continued February 17, 2011. The claimant participated in the hearing with Interpreter Tanja Abromovic. Carey Seger, Senior Human Resources Business Partner and Lynn McCormick, Operations Manager, participated in the hearing on behalf of the employer. Employer's Exhibit's One through Five were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time environmental service worker for Mercy Hospital working at the House of Mercy from August 25, 2003 to October 25, 2010. She received a verbal warning for failing to clean the toilets and sinks November 9, 2009. On April 29, 2010, she received a written warning for arriving at work more than one hour before the start of her shift on all but two occasions in February and March 2010; unlocking and entering a Primary Counselor's office and making personal phone calls; and because of complaints about her failure to sufficiently clean the communal restroom on one floor and the Teen floor in general (Employer's Exhibit One). On June 14, 2010, the claimant received a written warning and one day suspension after several counseling sessions about her cleaning performance, especially with regard to the importance of clean showers, shower curtains and bath tubs (Employer's Exhibit Two). On June 8, 2010, the Teen shower facilities were not in "a condition that was appropriate for use" (Employer's Exhibit Two). The warning also addressed another incident that occurred June 8, 2010, where the claimant was asked to begin her day by cleaning the day care area and she raised her voice and argued with the co-worker who told her to start her day with that task (Employer's Exhibit Two). The warning also stated the next incident could result in termination of employment (Employer's Exhibit Two). On October 25, 2010, the claimant's employment was terminated after the employer made the following observations about her work

performance October 19, 2010 (Employer's Exhibit Three). "The In Touch with Teens restroom has dirt and mold on the walls and the showers are not thoroughly cleaned. The outside and base of the toilets are not clean. There are cobwebs in the corners on the 3rd floor. The air conditioner unit is dirty. Tables are not adequately cleaned in the conference room. The machines in the Laundry Room are not wiped down. You did not notify anyone that some of the toilet seats are loose, the tub needs to be re-caulked and there is damage on the wall in the Laundry Room" (Employer's Exhibit Three).

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 § 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 claimant was counseled several times and received a verbal warning, a written warning and a written warning with suspension during her last year of employment. Although the claimant had demonstrated her ability to meet the employer's expectations in the past, she stopped working to her ability the last year of her employment. The claimant attributes her warnings and termination to the fact that Supervisor Mike Aves started April 30, 2009. While Mr. Aves and the employer may have held the claimant to a higher standard than previous supervisors, it was not unreasonable for the employer to expect basic cleaning duties to be completed. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a

willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The November 17, 2010, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs