

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOAN M BRANDT**  
Claimant

**APPEAL NO. 10A-UI-04749-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HEALTH SERVICES – IOWA CORP**  
Employer

**OC: 02/21/10**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 18, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 13, 2010. The hearing could not be completed on that date and the hearing reconvened on June 24, 2010. Claimant participated. The claimant was represented by Susan Hess, attorney at law. Nicole Adrian was a witness for the claimant. Employer participated by Bob Ripley, director of the pharmacy department; Bernie Fox, vice president of professional and support services; and Glenna O'Connor, employment specialist. The employer was represented by Gene La Suer, attorney at law, and Deb Tharnish, attorney at law.

The record consists of the testimony of Bob Ripley; the testimony of Glenna O'Connor; the testimony of Bernie Fox; the testimony of Joan Brandt; the testimony of Nicole Adrian; Claimant's Exhibits A-L; and Employer's Exhibits 1-7.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is an acute care hospital located in Dubuque, Iowa. The claimant was hired on November 22, 1976. She was a full-time pharmacy technician. She usually worked the evening shift, which ran from 2:00 p.m. to 10:30 p.m. The claimant was suspended on February 15, 2010, for three days. She was scheduled to return to work on February 19, 2010. She was terminated on February 19, 2010, approximately one hour after she came to work.

The series of events that led to the claimant's termination began on January 24, 2010. The claimant was not working that day. A miscommunication occurred between the day shift technicians and the night shift technician over the restocking of the medications in the operating

room. The pharmacy manager, Bob Ripley, held a meeting on January 25, 2010, with the three technicians to find out what happened and how the problem could be solved in the future. The claimant had no involvement in the meeting and the issue did not concern her. Mr. Ripley and three technicians resolved the issue in question and as far as Mr. Ripley was concerned, the matter was closed.

The claimant decided to get involved in the situation as she felt that one of the technicians, Nicole Adrian, was being "bad mouthed". The claimant wrote an email to Bob Ripley on January 26, 2010, telling him that the other two technicians were being unfair to Nicole. The email stated: "I truley [sic] hope that some action would be done on the matter as it was with Nicole and I over an honest truthful phone call." (Exhibit 4, p. 3) Mr. Ripley was angered by this email because he felt that the claimant was creating hostility and tension in the workplace by involving herself in a situation that did not concern her. The claimant had been disciplined in the past for this type of behavior. She had been suspended for one day on July 22, 2008, in part for making malicious and slanderous statements about another employee and creating a negative work environment. (Exhibit 1) The claimant was also warned about gossiping in late November 2009. (Exhibit 3, p. 1)

Mr. Ripley checked the schedule to find out when he could meet with the claimant and the two technicians the claimant accused of badmouthing Nicole. The meeting was held on February 1, 2010. During the meeting, Mr. Ripley concluded that the claimant had involved herself in a situation that was not her concern. The two other technicians indicated that they had not been angry with Nicole over the miscommunication but that they were angry about the claimant sending an email to Mr. Ripley about them and then showing the email to other employees. Mr. Ripley then excused the two technicians and told the claimant that she was stirring up trouble and gossiping, which in turn created a negative work environment. The claimant became angry with Mr. Ripley and yelled at him.

Mr. Ripley then conducted some additional investigation and determined that allegations made by the claimant about the two technicians were unfounded. He made the decision to suspend the claimant for three days, with the suspension to be served on February 15, 17, and 18, 2010. The claimant was not scheduled to work on February 16, 2010. In the written warning that accompanied the suspension, the claimant was informed that she had violated the employer's citizenship standards and displayed unacceptable behaviors. The written warning also stated that the failure to comply with the above or demonstrate any other behaviors that violate Mercy's citizenship standards or that create a negative work environment will result in further disciplinary action up to and including termination if needed. This could include any action that perceived as retaliatory in nature. (Exhibit 5, p. 1)

The claimant was given the warning and suspension in a meeting with Mr. Ripley and Glenna O'Connor on February 15, 2010. The claimant was specifically instructed that this was a confidential matter and was not to be discussed with any other employee. The claimant went to the locker room to change and Nicole Adrian happened to see the claimant. She asked the claimant what was wrong and the claimant proceeded to tell her about the suspension. The claimant and Nicole had several other phone conversations during the suspension days. The claimant also called two pharmacists who worked at the hospital. She asked Kristy Stille if Kristy would go and speak to human resources on her behalf. Ms. Stille told the claimant she did not want to get involved.

Mr. Ripley said that he became aware of what the claimant had done during her suspension on the morning of February 19, 2010, the day the claimant was scheduled to come back to work. Kristy Stille came to Mr. Ripley and told him about the phone call from the claimant. Ms. Stille

expressed her concern about working the same shift with the claimant, fearing some sort of retaliation from the claimant. Mr. Ripley decided that since the claimant had violated his express instructions not to discuss the matter with other staff and that the claimant had continued to try to create a negative workplace, that she should be terminated. The claimant was terminated on February 19, 2010.

The employer has written policies that set forth standards of care and behavior for its employees. These include treating team members with deep respect and compassion and doing nothing to undermine the work of others. An employee is to be discreet about what he or she says. An individual's commitment to the organization is to be reflected in behavior with co-workers. (Exhibit L)

#### **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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the duty owed by a worker to the employer. Insubordination, which is the continue failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). In Henecke v. IDJS, 533 N.W.2d 573 (Iowa App. 1995), the Iowa Court of Appeals stated that an employer has the right to expect decency and civility from its workers. The employer has the burden of proof to show misconduct.

After carefully reviewing all of the evidence in this case and weighing the credibility of the witness' testimony, the administrative law judge concludes that the employer has established misconduct. The claimant was suspended on February 15, 2010, for actions that violated the citizenship standards of the employer and creating a hostile and negative workplace. The claimant had gotten involved in a matter that was not her concern and in the process had created dissension among employees. This type of behavior was an ongoing problem, dating back to at least July 22, 2008, when the claimant was given a one-day suspension for insubordination and making slanderous or inflammatory comments about another employee. When the claimant was suspended on February 15, 2010, she knew that her employer regarded her behavior as a serious problem and that should she have another infraction, termination could result. The claimant was specifically instructed that she was not to discuss the suspension with any other employee.

Despite that clear instruction, the claimant violated that instruction on multiple occasions during her suspension. She spoke with Nicole in the locker room and there were several phone calls between them while she was on suspension. The claimant called two pharmacists and asked one of them to speak up for her at human resources. Although Ms. Stille did not testify at the hearing, Mr. Ripley testified that she came to him and told him about the call and that she was worried about working with the claimant on the same shift. The claimant acknowledged that she did not follow her employer's instructions but felt that they were inappropriate and that she should be able to talk to her friends. The claimant's actions constitute insubordination. It was not unreasonable for the employer to request that she not discuss the matter with other employees. The employer was attempting to stop the tension in the workplace caused by the claimant. Her phone calls both violated reasonable instructions from her employer and caused further problems in the workplace.

The claimant attempted to justify her behavior, in part, by saying that she was treated differently by Mr. Ripley. Nicole Adrian, who described herself as the claimant's friend, testified that Mr. Ripley did not treat the claimant differently. There is no credible evidence that the claimant's termination was retaliation against the claimant for reporting a problem in the cardiac lab where Mr. Ripley's wife worked.

Since the claimant was discharged for misconduct, she is disqualified from receiving benefits. Benefits are denied.

**DECISION:**

The decision of the representative dated March 18, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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