

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VERONICA M KRAGE
Claimant

APPEAL NO. 09A-UI-07867-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FAMILY HEALTH CARE OF
SIOUXLAND PLC**
Employer

OC: 04/19/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.6-2 – Burden of Proof

STATEMENT OF THE CASE:

Veronica M. Krage filed a timely appeal from an unemployment insurance decision dated May 18, 2009, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was held in Sioux City, Iowa July 14, 2009 with Ms. Krage participating and being represented by Jack Faith, Attorney at Law. Executive Director Shanin McCave and Clinic Manager Julie Lau participated for the employer, Family Health Care of Siouxland, PLC. Employer Exhibit One was admitted into evidence.

ISSUE:

Has the employer met its burden of proof of misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Veronica M. Krage was employed as a registered nurse by Family Health Care of Siouxland, PLC from April 9, 2007 until she was discharged April 15, 2009. On April 10, 2009, Radiology Technician Patty Mahaney reported to Clinic Manager Julie Lau that approximately two months previously she had overheard Ms. Krage speaking to one patient about another patient's treatment. Ms. Mahaney did not explain why she waited so long to make the report, and Ms. Lau did not inquire. Ms. Lau reported the conversation to Executive Director Shanin McCave.

Ms. Krage was off duty until April 15, 2009. On the 15th, Ms. McCave and Ms. Lau met with Ms. Mahaney and Ms. Krage separately. Ms. Krage stated that she could not categorically deny any such conversation but that she did not recall one. Ms. Mahaney repeated her earlier statements.

Ms. Mahaney is still employed at Family Health Care of Siouxland, PLC.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for a current act of misconduct. It does not.

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. See Iowa Code section 96.6-2. The employer's evidence consisted almost entirely of hearsay. Neither Ms. McCave nor Ms. Lau have any information concerning the incident aside from information given to them by the claimant and by Ms. Mahaney. Ms. Krage under oath in the hearing denied the statements attributed to her. Inexplicably, Ms. Mahaney was not called to testify. The employer's hearsay evidence is not sufficient to overcome the claimant's sworn testimony subject to cross-examination. Based on the evidence in this record, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated May 18, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs