

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L HANNES

Claimant

APPEAL NO. 09A-UI-03609-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITY HEALTH SYSTEM

Employer

OC: 02/01/09

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jessica L. Hannes filed a timely appeal from an unemployment insurance decision dated February 27, 2009, reference 01, that disqualified her for benefits. After due notice was issued, a telephone was held March 31, 2009 with Ms. Hannes participating and presenting additional testimony by Debra Mousty. Human Resources Coordinator Angela Huthmacher participated for the employer, Unity Health System.

ISSUE:

Does the evidence establish that the claimant was discharged for 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: Jessica L. Hannes was employed by Unity Health System from February 11, 2005 until she was discharged February 5, 2009. She last worked as an aide for environmental services.

It was reported to Human Resources that on February 4, 2009, Ms. Hannes had uttered the words, "Holy Shit," upon seeing an obese patient. It was also reported that the patient overheard the comment. Although Ms. Hannes denied making the statement, she was discharged. She worked most of the day with Debra Mousty. Ms. Mousty did not hear Ms. Hannes make such a statement.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. 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 entirely of hearsay. The nurse who had reported the incident was at work today according to Ms. Huthmacher, but the nurse was not called to testify. Ms. Hannes denied under oath making the comment. Ms. Mousty denied under oath hearing Ms. Hannes make the comment. Without hearing directly from a firsthand witness on behalf of the employer, the administrative law judge concludes that the employer has not met its burden of proof. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated February 27, 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