

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PRISCILLA E MARTINEK**  
Claimant

**APPEAL NO. 09A-UI-09016-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALEGENT HEALTH**  
Employer

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

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Priscilla E. Martinek filed a timely appeal from a representative's decision dated June 17, 2009, reference 01, which denied benefits based upon her separation from Alegent Health. After due notice, a hearing was held in Council Bluffs, Iowa on July 8, 2009. The claimant participated personally. Although duly notified the employer indicated in writing that they would not be participating.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered the evidence in the record, finds: The claimant was employed as a full-time laboratory technician for Alegent Health from September 2008 until October 23, 2009 when she was discharged from employment for repeated labeling errors.

The claimant was discharged after she continued to make labeling errors on blood samples although she had been warned by the employer. Ms. Martinek had received training and had demonstrated the ability to perform her duties under normal circumstances. At times, however, the claimant made errors in labeling due to factors beyond her control including excessive numbers of samples to be labeled without sufficient help, additional duties to be performed, telephone calls and computer instructions being issued to the claimant. Ms. Martinek attempted to the best of her ability to improve her performance after being warned but was discharged when the employer believed she had made an error in labeling a blood sample approximately one week before her termination from employment. The claimant does not recall the exact sample that was mislabeled as she was attempting to correctly label all samples but believes that any error that occurred took place due to factors beyond her control.

The claimant had reported to her employer that she was having some difficulty with concentration and was seeing a counselor for the condition. The employer elected to continue the claimant in the same job position although aware of Ms. Martinek's cognitive difficulties.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct on the part of this claimant at the time of termination.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate intentional culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegations, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Ms. Martinek appeared personally in this matter and testified under oath that she performed her duties to the best of her ability and any errors that occurred were due to factors that she believed were beyond her control. The claimant testified that she was required to label and process numerous blood samples each shift and that at times there was not sufficient help available to minimize confusion. Claimant testified that lab technicians were often distracted by other duties, telephone calls and computer messages while attempting to perform their duties. The claimant testified that after she was warned she made a specific attempt to perform her duties to the best of her ability at all times but errors nevertheless occurred occasionally due to the above-stated factors. Prior to being discharged the claimant had informed her employer of some difficulty the claimant was having with concentration, however, the employer elected to continue to have Ms. Martinek perform duties that were detail-sensitive.

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.

While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the employer has not sustained its burden of proof in establishing disqualifying conduct. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated June 17, 2009, reference 01, is reversed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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