

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CATHERINE D HESS
3126 ROHRET RD
IOWA CITY IA 52240**

**THE UNIVERSITY OF IOWA
c/o DAVE BERGEON
– EMPLOYEE RELATIONS
121 “R” UNIVERSITY SERVICES BUILDING
IOWA CITY IA 52242-1316**

**WILLIAM TITUS
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**Appeal Number: 05A-UI-08354-D
OC: 07/17/05 R: 03
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Catherine D. Hess (claimant) appealed a representative's August 4, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from the University of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on November 15, 2005. The claimant participated in the hearing and was represented by William Titus, attorney at law. Dave Bergeon appeared on the employer's behalf and presented testimony from two witnesses, Bill Millard and Dave Ambrisca. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 14, 2001. She worked full time as a custodian in the employer's hospitals and clinics. Her last day of work was July 12, 2005. She was absent due to illness and previously arranged vacation from June 27 through July 11, 2005. The employer discharged her on July 12, 2005. The reason asserted for the discharge was removing a plant from a patient's room.

On July 17, 2005, the claimant noticed that a patient's room appeared vacant. She asked a desk clerk if the patient was "gone," and the clerk responded "yes." The claimant took this as meaning that the patient had been discharged. She assumed that she just had not yet been notified of the discharge by environmental services, and preceded to clean the room as a discharge. There was one personal item left in the room, a begonia. The claimant assumed that the patient had forgotten or abandoned the plant, and placed it in the custodial closet until the end of the day when she took it home. The proper thing to do with the plant as per the employer's standard procedure (Employer's Exhibit One) would have been to place it in a belongings bag and given it to nursing with a notation as to the room and bed. The claimant was not thinking of the plant in the same context of other personal items such as clothing or books.

When the claimant returned to work the following Monday, June 20 she learned from her team leader that the patient in fact had not been discharged, but that he had been out of the room for the majority of the day June 17 for testing or therapy, and that there was a complaint that the plant had been taken. The claimant brought the plant back the next day, June 21, 2005. She worked through June 24, 2005 with nothing more said about the incident. However, when she returned to work on July 12, she was questioned and then discharged for removing property from the premises. There had been no prior history of discipline with the claimant.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is her taking the patient's plant home with her on June 17, 2005. Misconduct connotes volition and must be "substantial." Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). There is no evidence the claimant intentionally violated the employer's rules or meant to deprive someone of their property. When she discovered her error, she was forthright and took prompt remedial action. White v. Employment Appeal Board, 448 N.W.2d

691 (Iowa 1989). Under the circumstances of this case, the claimant's taking of the plant was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's August 4, 2005 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/tjc