

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHY C RUSHING

Claimant

APPEAL NO. 13A-UI-03341-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER

Employer

OC: 02/14/17

Claimant: Appellant (1)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision dated March 13, 2013, reference 01. The decision found her ineligible for unemployment benefits. After due notice was issued a hearing was held in Des Moines, Iowa, on May 7, 2013. The claimant participated on her own behalf. The employer participated by Vice President of Human Resources Julie Kilgore. Director of Environmental Services Adam Maus and Director of Customer Relations Connie Rainey. Exhibits A, One and Two were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Kathy Rushing was employed by Broadlawns from October 17, 2011 until February 14, 2013 as a full-time environmental services technician. She received an evaluation April 23, 2012, which stated her performance needed to improve because the standards were not being met. It notified her that her job was in jeopardy.

In October 2012 the employer received a citation because the surgical rooms were not cleaned to required standards. The cleaning staff was given retraining October 31, 2012, and all were issued a warning and a 90-day probation for poor performance. On February 8, 2013, the cleaning staff was told by Adam Maus he would begin testing the surgical rooms for cleanliness using a black light.

This test was performed by him putting invisible ink on certain "high touch" areas such as light switches, bed rails, remote controls and the phone. The ink was able to be removed by wiping down the surface with plain water. He tested two rooms on February 12 and 13, 2013, and found the ink had not been removed. Ms. Rushing had signed off on the work she had cleaned those rooms on those dates.

On February 14, 2013, Mr. Maus and Connie Rainey met with Ms. Rushing and told her about the test. She had signed off on the tracking documents she had cleaned the rooms and asserted at the meeting the same thing. When confronted with the results of the tests she then admitted she had not cleaned them. She was discharged at that time.

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.

The claimant had been advised her job was in jeopardy as a result of poor work performance. She signed her evaluations and her warning and acknowledged she had received the retraining given in order to bring the hospital into compliance. Ms. Rushing maintains her reading and comprehension skills are poor but at no point did she ever request anyone to read the documents to her so she could understand what she was signing. She denied she had been informed the rooms were going to be inspected with a black light but did know what she had to do in order to do the job as required.

The employer's tests showed that Ms. Rushing had not cleaned the room at all because all of the invisible ink areas were untouched in both rooms on both days, but the claimant had "signed off" that she had cleaned them. This is not only falsification of documents but refusal to perform her work as required by her training and the employer policies. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of March 13, 2013, reference 01, is affirmed. Kathy Rushing is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs