

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY P SCHLEISMAN
Claimant

APPEAL NO. 07A-UI-01293-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAVIS COUNTY HOSPITAL
Employer

**OC: 01/07/07 R: 03
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Davis County Hospital filed an appeal from a representative's decision dated January 26, 2007, reference 01, which held that no disqualification would be imposed regarding Anthony Schleisman's separation from employment. After due notice was issued, a hearing was held by telephone on February 20, 2007. Mr. Schleisman participated personally. The employer participated by Lois Westercamp, Human Resources Manager; Connie Roberts, Acute Care Manager; and Nola Pollman, Chief Nursing Officer.

ISSUE:

At issue in this matter is whether Mr. Schleisman was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Schleisman was employed by Davis County Hospital from November 8, 2004 until January 5, 2007, as a full-time registered nurse. He was discharged from the employment.

Mr. Schleisman received a counseling on December 15, 2005 because of remarks he made on the floor. He was getting coffee for a patient and confirmed that the patient liked his coffee the way he liked his women, "black and strong." On December 19, 2006, he was again counseled after a patient complained about his language. The patient commented on a survey card that Mr. Schleisman had used foul language in his presence. The patient did not identify himself on the survey card.

The decision to discharge was based on a gift Mr. Schleisman gave his supervisor on January 5, 2007. Before he gave the gift to Connie Roberts, he asked her if she could take a joke. She indicated she did not want to hear it if it was offensive. The gift was a card and what appeared to be a scratch-off lottery ticket. When Ms. Roberts scratched the ticket, it revealed the words, "fuck you, asshole." Mr. Schleisman knew what was written on the card under the scratch-off portion because he had given the same card to someone else. After Ms. Roberts

had scratched off the ticket, Mr. Schleisman took it and showed it to another employee. As a result of the incident, he was discharged on January 5, 2007.

Mr. Schleisman filed a claim for job insurance benefits effective January 7, 2007. He has received a total of \$1,670.00 in benefits since filing his claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Schleisman's discharge was prompted by the gift he gave Ms. Roberts on January 5, 2007. He knew or should have known that his actions were inappropriate. He had received a warning on December 19, 2006 regarding his language at the workplace. While he may not have engaged in the conduct cited by the patient survey, the warning did serve to put him on notice that foul language would not be tolerated at the workplace.

Mr. Schleisman knew before he gave the gift to Ms. Roberts that it said "fuck you, asshole" when it was scratched off. He also knew before he gave it to her that she did not want it if it was offensive. In spite of what he knew of the card and her wishes, he still gave it to her. This might be a different matter if Mr. Schleisman had not known what was on the card and Ms. Roberts had not indicated she did not want to see offensive material. The administrative law judge concludes that his conduct was clearly contrary to the type of behavior the employer had the right to expect. Therefore, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

Mr. Schleisman has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated January 26, 2007, reference 01, is hereby reversed. Mr. Schleisman was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Schleisman has been overpaid \$1,670.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css