

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIE A GAILEY**  
Claimant

**APPEAL NO. 12A-UI-13016-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRINITY REGIONAL MEDICAL CENTER**  
Employer

**OC: 10/07/12**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Julie Gailey, filed an appeal from a decision dated October 26, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 3, 2012. The claimant participated on her own behalf. The employer, Trinity Regional Medical Center (Trinity), participated by Manager of Human Resources. Ted Vaughn and Manager of Three North Julie Hewlitt.

**ISSUE:**

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

**FINDINGS OF FACT:**

Julie Gailey was employed by Trinity from September 10, 1997 until October 4, 2012 as a part-time unit clerk. During the last 12 months of her employment she received written warnings regarding attendance and performance. On December 30, 2011, she was reprimanded for being disrespectful to a co-worker, calling the unit after she was off work and speaking with a patient care technician in such a manner as to reduce her to tears. On January 12, 2012, she received a warning for not completing her required, quarterly on-line training, even after being remanded by Manager of Three North Julie Hewlitt before the end of the year.

On August 1 and 2, 2012, she received two written warnings for being tardy to work on both of those days. The reprimands all contained an advisement her job was in jeopardy if there were any further incidents.

On October 2, 2012, Ms. Hewlitt asked the claimant if she would work on the pain unit October 4 and 8, 2012. After ascertaining the hours she would be scheduled to work she agreed. Ms. Hewlitt told her she could go to the pain unit at some time that day to familiarize herself with the routine, but was to ask her own charge nurse for permission before leaving Three North. Later Ms. Hewlitt learned the claimant had not asked the charge nurse before leaving and spent her time in the pain unit on her cell phone making and receiving text

messages, a problem other staff had brought to her attention before. Ms. Hewlitt told the pain center she would come in the next day on her day off to get the information.

On October 3, 2012, Ms. Gailey was 34 minutes late and again spent a lot of time texting on her cell phone. Ms. Hewlitt was summoned to the pain center and found the claimant in an obvious state of exhaustion from working all night at her other job. She was scheduled to work all night that night as well and the employer determined she was not going to be in a fit state to work the next day, either.

On October 4, 2012, Manager of Human Resources Ted Vaughn met with Ms. Hewlitt and Ms. Gailey and discussed the ongoing problems of the past few days. The claimant attempted to make some explanations which largely consisted of blaming other people, a defense she had used frequently in the past. At the end of the discussion she was discharged for failing to appropriately communicate and perform her scheduled duties.

### **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 denied all of the allegations against her stemming from the events of October 2, 3 and 4, 2012. She even went so far as to deny she was given any reason for the discharge even though she acknowledged a 20 minute meeting with Mr. Vaughn and Ms. Hewlitt discussing these matters. She alleged Ms. Hewlitt made up all the allegations because she "hated" her but

could give no explanation as to why Mr. Vaughn did not find her denials credible except that he believed Ms. Hewlitt rather than herself. The judge considers there to be a reason for Mr. Vaughn's determination of credibility and resolves the overall issue of credibility in favor of the employer.

The claimant had a history of behavior which was largely self-serving and insubordinate. The number and variety of warnings in less than ten months is evidence of this. The administrative law judge considers the claimant to have been discharged for substantial, job-related misconduct by failing to notify the charge nurse when she left to go to the other unit, by being late for work the next day, and by not attending to the instructions given to her but texting on her cell phone instead

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 October 26, 2012, reference 01, is affirmed. Julie Gailey is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css