

**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**

**ANTOINIA L PASUT
4414 – 67TH ST
URBANDALE IA 50322-1820**

**IOWA JEWISH SENIOR LIFE CENTER
900 POLK BLVD
DES MOINES IA 50312**

**THOMAS REAVELY
ATTORNEY AT LAW
317 – 6TH AVE STE 1200
DES MOINES IA 50309-4195**

**Appeal Number: 06A-UI-05786-S2
OC: 04/30/06 R: 02
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 for Misconduct

STATEMENT OF THE CASE:

Antoinia Pasut (claimant) appealed a representative's May 24, 2006 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Iowa Jewish Senior Life Center (employer) for conduct not in the best interests of the employer. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Des Moines, Iowa, on June 20, 2006. The claimant was represented by Thomas Reavely, Attorney at Law, and participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in 2003 as a full-time registered nurse. She suffers from hypoglycemia and must eat when necessary. The employer is supposed to provide for two 15-minute breaks and a 30-minute lunch.

On May 4, 2006, the claimant was denied her 15-minute breaks and most of her luncheon break because she was busy with work. When she had only ten more minutes to take her luncheon break, a subordinate jokingly told the claimant she should take a kitchen staff person's blood pressure. The claimant asked the subordinate to have one of the three other nurses take the person's blood pressure. The kitchen staff person looked tired to the claimant, but not ill. The subordinate asked two other nurses to take the blood pressure but they said they could not because they were busy. The claimant went to lunch for five minutes and was called back to work because the kitchen staff person collapsed. The kitchen staff person had something to eat and drink and returned to work.

The employer terminated the claimant on May 5, 2006, for failure to take the kitchen staff person's blood pressure. The other two nurses were not terminated. The claimant was not aware that she was responsible for the care of non-residents.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not participate in the appeal hearing and no evidence of misconduct was presented at that hearing. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 24, 2006 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible

bas/cs