

**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**

**MARY J GULICK
1366 CROSSCUT RD
PLATTEVILLE WI 53818**

**FINLEY HOSPITAL
ATTN HUMAN RESOURCES DEPT
350 N GRANDVIEW
DUBUQUE IA 52001**

**TED HUINKER
ATTORNEY AT LAW
200 SECURITY BLDG
151 W 8TH ST
DUBUQUE IA 52001**

**Appeal Number: 05A-UI-11920-CT
OC: 10/30/05 R: 04
Claimant: Appellant (1)**

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:

Mary Gulick filed an appeal from a representative's decision dated November 17, 2005, reference 01, which denied benefits based on her separation from Finley Hospital. After due notice was issued, a hearing was held by telephone on December 8, 2005. Ms. Gulick participated personally and was represented by Ted Huinker, Attorney at Law. The employer participated by Shelley Stickfort, Business Partner; Karla Waldbillig, Director of Human Resources; Douglas Becker, Director of Respiratory Therapy; and Sharon Gaherty, Jamie Smith, and Marion Theisen, Respiratory Therapists.

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: Ms. Gulick was employed by Finley Hospital from June 16, 1975 until October 27, 2005 as a full-time respiratory therapist. She was discharged for disobeying a directive from her supervisor. On October 3, 2005, Ms. Gulick approached her supervisor to confirm information she had received that she was not to perform treatment on a particular patient. The supervisor advised her that the patient, Robert, and his family had requested that she not administer treatment. Ms. Gulick understood the directive.

At the time the directive was given, Robert was on the fifth floor of the facility. As of October 5, he had been moved to the fourth floor. On October 5, Ms. Gulick took the list of patients for the fourth floor, which did not include Robert. However, because he had been moved, he was in one of the rooms where Ms. Gulick was to perform treatment. After she completed treatment on the other patient, Robert requested his treatment. Ms. Gulick did not page another therapist but administered the treatment herself. She did not advise the supervisor that she had given the treatment because Robert had been unexpectedly moved or that he had requested that she perform treatment.

Robert continued to be on fourth floor on October 7, 10, and 11. Ms. Gulick performed treatment on him on all three days but never advised her supervisor that she had done so. Her actions were documented in the patient's chart. Another therapist reported to the supervisor that Ms. Gulick was continuing to provide Robert treatment. The report was made to the employer on or about Friday, October 21, and the employer spoke to Ms. Gulick on the following Monday, October 25. She told the employer she continued to provide treatment to Robert because it was convenient as he was in the room with another individual receiving treatment. Ms. Gulick was notified of her discharge on October 27, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Gulick was separated from employment for any disqualifying reason. 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). Ms. Gulick was discharged for violating a directive from her supervisor. She knew Robert's family did not want her to provide treatment for him. Her actions of October 5 are understandable given that Robert was not on the list of patients she intended to see on fourth floor. However, Ms. Gulick made no effort to advise her supervisor that she felt compelled to provide treatment to Robert under the circumstances as they existed on October 5. Instead, she continued to provide him with treatment on three separate dates thereafter without ever advising her supervisor. If she felt continuing to provide treatment to Robert was unavoidable, Ms. Gulick should have made the supervisor aware of this fact.

Ms. Gulick's flagrant and repeated disregard of the stated wishes of the patient's family was contrary to the standards the employer had the right to expect. Whether the family's wishes were justified is not an issue. Ms. Gulick's actions had the potential of causing the family to believe the hospital had no regard for their wishes or what they felt was the best interest of the patient. For the reasons stated herein, the administrative law judge concludes that the employer has satisfied its burden of proving a substantial disregard of its standards and interests. Accordingly, benefits are denied.

DECISION:

The representative's decision dated November 17, 2005, reference 01, is hereby affirmed. Ms. Gulick was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/pjs