

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA L ANDERSON
Claimant

APPEAL NO. 12A-UI-07907-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLINTON DENTAL SURGERY CENTER PC
Employer

**OC: 01/15/12
Claimant: Appellant (2)**

Section 96.4(3) – Able and Available
Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Angela Anderson, filed an appeal from a decision dated June 29, 2012, reference 05. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 24, 2012. The claimant participated on her own behalf. The employer, Clinton Dental Surgery Center PC (Clinton Dental), participated by Robert Alt.

ISSUE:

The issue is whether the claimant is able and available for work and whether she was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Angela Anderson began employment with Clinton Dental February 28, 2012, as a part-time intern/trainee for the position of dental assistant. The Dr. Robert Alt was aware she did not have a high school diploma or a GED as required by the Iowa Board of Dentistry. But he believed she would need to have this in order to be licensed at the end of the training period and could obtain the GED during her training.

A month or so after Ms. Anderson began her employment Dr. Alt was informed she must have the GED before she could enter the training program at all. He gave her until the end of June to obtain the GED and in the mean time he reduced her hours to one-half day per week doing general office cleaning. She was available to work the same hours for which she was hired but could not work them as her status in the training program was in doubt.

Ms. Anderson passed four of the five tests for the GED by the end of June 2012. On July 11, 2012, Dr. Alt told the claimant he could no longer hold open the position of the dental assistant trainee and dismissed her.

Ms. Anderson is currently attempting to pass the fifth test in order to obtain her GED while she searches for work. She has no restrictions on her physical capabilities, has transportation and does not need child care.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The claimant is able and available for work currently and was also available during the time she was reduced in hours by Clinton Dental before the dismissal.

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 was dismissed because she was unable to pass the fifth test in order to obtain her GED, and the employer could not continue to have her working as she was not qualified for the training program. A failure to successfully complete required course work is not evidence of misconduct where there is an attempt in good faith to satisfy the requirements. *Holt v. IDJS*, 318 N.W.2d 28 (Iowa App. 1982). Ms. Anderson's discharge was not for misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of June 29, 2012, reference 05, is reversed. Angela Anderson is able and available for work. She is also qualified for benefits as her discharge was not for misconduct.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css