

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELSEY A TERPSTRA
Claimant

APPEAL NO. 13A-UI-05572-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRINNELL REGIONAL MEDICAL CENTER
Employer

OC: 03/31/13
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Grinnell Regional Medical Center (GRMC), filed an appeal from a decision dated May 3, 2013, reference 01. The decision allowed benefits to the claimant, Kelsey Terpstra. After due notice was issued, a hearing was held by telephone conference call on June 17, 2013. The claimant participated on her own behalf. The employer participated by Director of Clinic Cheryl Rutledge and Human Resources Generalist Josey Van Welden.

ISSUE:

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

FINDINGS OF FACT:

Kelsey Terpstra was employed by GRMC from January 2 until March 29, 2013 as a full-time LPN. She was discharged by Director of Clinics Cheryl Rutledge on March 29, 2013, due to unsatisfactory work. There had been some confusion about time for appointments which Ms. Terpstra had discussed with the employer prior to accepting the job. There were allegations she had been angry with a patient whom she put on hold and had someone else handle.

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 was discharged for unsatisfactory performance. The allegations of her refusing to work at remote clinics appear to be the result of poor communication as she maintains these appointments were scheduled before she began working and were discussed with management. The allegation of becoming angry with a patient was denied by the claimant but the employer acknowledged she referred the call to someone else to avoid escalating the situation. This appears to be a prudent course of action.

Overall the administrative law judge cannot conclude the employer has met its burden of proof to establish willful and deliberate misconduct. Ms. Terpstra was not given any warnings during her period of employment to inform her certain areas of her work needed improvement. Under the provisions of the *Huntoon* case (supra), unsatisfactory work performance does not rise to the level of disqualifying misconduct.

DECISION:

The representative's decision of May 3, 2013, reference 01, is affirmed. Kelsey Terpstra is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css