

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL A GRIFFITH

Claimant

APPEAL NO. 11A-UI-11701-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER – CLINTON INC

Employer

OC: 08/07/11

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 31, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on September 29, 2011. Claimant participated. Employer participated through lab director, Lynn Haaf and director of human resources, Diane Grants.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a lab assistant and was separated from employment on August 8, 2011. He used social networking on Facebook to vent about a three--day suspension (he was warned and suspended about being angry and having complained to a physician about ordering too many tests, and telling a patient why he was drawing blood rather than leaving the diagnosis discussion to the physician) and he commented about how patients were treated in the emergency department. ("I'm not going to stand by and watch the patients be abused anymore.") The employer suggested he go through employee assistance program (EAP) about his anger issues. The emergency room director brought it to Haaf's attention and she confronted claimant who said he did not think he did anything wrong. The employer has a policy and training that claimant attended in March 2011 that prohibits disclosure of work related information or events on social networking.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Claimant's use of Facebook to complain about his suspension and the way patients were treated in the emergency department was a direct violation of the policy for which he was trained in March. This rises to the level of disqualifying job related misconduct. Since other comments from coworkers were not of the same nature, there was no disparate treatment. Benefits are denied.

DECISION:

The August 31, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs