

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BECKEE S FOSS

Claimant

APPEAL NO. 10A-UCFE-00053-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VA CENTRAL IOWA HEALTH

Employer

OC: 11/07/10

Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Beckee Foss, filed an appeal from a decision dated December 8, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 31, 2011. The claimant participated on her own behalf. The employer, VA Central Iowa Health, participated by Human Resources Specialist Greg Smith.

ISSUE:

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

FINDINGS OF FACT:

Beckee Foss was employed by VA Central Iowa Health from March 4, 2007 until October 19, 2010 as a full-time registered nurse. On September 22, 2010, the claimant was arrested in the grounds of the VA Hospital in Des Moines, Iowa, and charged with assault on a police officer. A call was made to her supervisor later that day by an unidentified person saying she would be absent the next day due to illness.

Ms. Foss does not know who made the call. After being arrested she called her daughter, who is a minor, and asked her to contact two of her co-workers and have them notify the supervisor of her absence. The employer was not able to say who actually made the call but it was reported Ms. Foss had requested sick leave when she had none available, and it was a falsification because she was not ill.

The claimant was absent because she had been charged with assault on a police officer and incarcerated. This was because she had knocked down a VA police officer with her car. She maintained it was an accident because another person had struck her car and the officer, who was nearby, was “raging” at her while she was in the car. When he reached in her car to unlock the door because she would not get out, her foot slipped off the brake and knocked him down. Criminal charges were filed but the matter has not come to trial as of the date of the hearing.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has provided no first-hand, eye witness testimony from anyone regarding either of the incidents of alleged misconduct. The claimant denied that she told the supervisor she was absent due to illness on September 23, 2010, and the supervisor who reported she had done so, did not participate. The claimant was, in fact, still incarcerated and could not have made the call to her supervisor.

In addition, the claimant maintained her innocence on the assault charge, stating it was an accident brought on by the hostile demeanor of the officer who appeared to be threatening her physically. Although Ms. Foss did not present any testimony from another eyewitness, neither did the employer present any witnesses to rebut her statement it was an accident, or to at least confirm the allegation the officer was acting in a hostile and threatening manner.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden

of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of December 8, 2010, reference 01, is reversed. Beckee Foss is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs