

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA MONTAGNE
Claimant

APPEAL NO: 12A-UI-06988-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HEALTH SERVICES – IOWA CORP
Employer

OC: 05-13-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 4, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 9, 2012. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time environmental services worker for Mercy Health Services from July 25, 2011 to March 23, 2012. On March 21, 2012, the claimant was repeatedly paged to a room she had already cleaned by the lead technician. The claimant responded to each of the pages but did not get an answer. The room she was being paged to only contained one bed. The claimant checked with the bed tracking unit to see if a bed was added to that room or something else had come up, but that room number did not show up as needing service. The claimant was called directly to the room in question. After checking the room and not finding any problems, the claimant left that room and met the lead technician in the hallway. The lead technician had her hands on her hips and asked the claimant why she thought she did not have to respond when she received a stat page. The claimant told the lead technician the stat did not exist because the room only contained one bed which she had already serviced. They had a small argument and the claimant said, "Girl, come with me and I'll show you that room and if you had checked that room before you came over you would have known that was not the actual room." They began walking toward the room with the lead technician behind the claimant. When the claimant arrived at the room, there was a nurse present and the claimant asked the nurse if the lead technician was still behind her. She then apologized to the nurse and said she knew her voice sounded a "little rough" but "someone here is starting to make me a little bitchy here tonight." She then showed the lead technician the room and the lead technician stated she

was only doing what she was told to do and the claimant was being stat-ed and would not listen to her. The claimant stated she had a room to finish and the lead technician said, "You are not going to get away with this," and they went their separate ways. The lead technician then called the supervisor, who was at home, and she came in and called the claimant to the office. When the claimant arrived the supervisor stated the claimant was disrespectful toward the lead technician, who was present for the meeting, and the claimant responded that if she did anything, she embarrassed the lead technician. The claimant then asked the lead technician if she thought the issue was something they could have taken care of themselves and was told patients and visitors had complained about the claimant's outbursts. The supervisor said the claimant called the lead technician a bitch. The shift was over at that point and the claimant was allowed to leave but not before the supervisor told the claimant not to think "this is over." On March 22, 2012, the claimant reported for her shift but was not on the daily schedule. The supervisor and night technician supervisor met with the claimant and told her she was "threatening and caused havoc" at work and patients and visitors had complained about her. She was notified she was being suspended for three days without pay. On March 23, 2012, she was called to come back in and meet with the supervisor, at which time her employment was terminated because the employer and the claimant's co-workers could not trust her and the employer believed she was a threatening presence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined by Iowa law. The employer failed to meet its burden of proof. Therefore, benefits must be allowed.

DECISION:

The June 4, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw