

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH R ADAMS**

Claimant

**METROPOLITAN MEDICAL**

Employer

**APPEAL NO: 10A-UI-10479-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/27/10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated July 22, 2010, reference 01, that held the claimant was not discharged for misconduct on June 28, 2010, and benefits are allowed. A telephone hearing was held on September 9, 2010. The claimant participated. Terry Masek, HR Officer, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on May 13, 2002, and last worked for the employer as a full-time out-patient associate on June 29, 2010. The employer issues corrective action warnings as part of its progressive disciplinary policy.

The employer issued written warnings to the claimant for excessive absences on January 9, 2009, May 13, 2009, and December 28, 2009. The claimant was promoted to her most recent job position in March 2010, and she was given a raise in pay. The claimant was issued a final attendance warning on May 14, 2010 for excessive tardiness.

On June 24, the claimant was attempting to help a man and a woman who were holding specimen cup samples while standing in a line of patients to be waited on. She took the specimens from them, and set them aside that allowed them to leave the facility. After assisting other patients, the claimant took the specimens and noticed they had not been pre-labeled that she believed was protocol. Since she could not establish which patient gave the specimen, she placed a label on one and eventually discarded the entire sample.

The claimant was discharged on June 29, 2010 for mis-identifying the patient samples as a fifth corrective action offense that merits termination from employment in light of the attendance warnings.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on June 29, 2010.

The employer corrective action may warrant employment termination but it is not controlling on the issue of disqualifying misconduct. The claimant's disciplinary history is based on attendance issues, but the current act (offense) involves a job performance issue. While the claimant should not have accepted the patient specimens without properly labeled containers,

her mistake was in good faith and an inadvertent error. The claimant was an eight-year employee, but she was new to her most recent position. She believed the specimen containers had been pre-labeled that is the reason she did not check when she received them. She was trying to help two patients at a busy time, and her job performance error does not rise to an act of misconduct.

**DECISION:**

The department decision dated July 22, 2010, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on June 29, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs