

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY A CASE**  
Claimant

**APPEAL NO. 13A-UI-02306-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND HEALTH MANAGEMENT**  
Employer

**OC: 01/20/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Cindy A. Case (claimant) appealed a representative's February 20, 2013 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Heartland Health Management (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 25, 2013. The claimant participated personally. The employer participated by Sheila Matheney, Administrator; Jiana Ledbetter, Certified Nurses' Assistant; Lisa Dehne, Director of Nursing; Kyla Galusha, Licensed Practical Nurse; Beth Moehle, Registered Nurse; AND Marjorie Wixom, Certified Nursing Assistant. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 15, 2008, as a full-time certified nursing assistant. The claimant signed for receipt of the employer's handbook on July 14, 2008. The employer issued the claimant written warnings on September 5 and October 23, 2012, for being rude and disrespectful in the workplace. The employer notified the claimant that further infractions could result in termination from employment. On October 28, 2012, the employer placed the claimant on a 90-day probation for her behavior.

On January 19, 2013, the claimant went to a resident's room to respond to a call light with a co-worker. The claimant asked the resident why the resident "peed the bed." The resident said that the claimant turned the call light off before when the resident had to go to the bathroom stating the resident would soon have a shower. The claimant told the resident that the resident should have called for help. The resident was upset and cried after the situation with the claimant. The shower room assistant told the employer that the resident was upset about the claimant's unkind behavior and words. The employer investigated and terminated the claimant on January 22, 2013.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

## DECISION:

The representative's February 20, 2013 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid

wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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