

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY M DROSS

Claimant

APPEAL NO: 11A-UI-09704-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENNIE EDMUNDSON MEMORIAL

HOSPITAL

Employer

OC: 06/19/11

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 14, 2011, reference 01, that held the claimant was not discharged for misconduct on June 24, 2011, and benefits are allowed. A telephone hearing was held on August 15, 2011. The claimant participated. Donna Wellwood, HR Director, Mary Colburn, Supervisor and Kathy Heuwenkel, Staff Assistant, participated for the employer. Employer Exhibit One was received as evidence.

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 19, 2008, and last worked for the employer as a full-time C.N.A. on June 21, 2011. The claimant had a job related injury in October 2010, and was off work until December. The employer handled the paperwork for the leave period.

The claimant sent an e-mail to her supervisor about two weeks prior to May 6 that she needed to be taken off the work schedule due to a medical procedure. At that time, claimant was scheduled up to May 24. The supervisor took claimant off the work schedule and she directed her to human resources (HR). HR sent claimant a leave approval letter on or about May 10/11, and FMLA paperwork for her that she received.

Claimant returned to work on May 24 and provided a doctor's note dated May 19 that she could return to work without restrictions. The leave of absence request form signed by claimant's supervisor states the leave period is to commence on May 6 and end on May 24. Claimant's health care provider signed the medical certification form on May 26 and provided it to the employer. The employer faxed and re-faxed the form to the provider to seek additional

information about the leave request and need for the period of absence. The employer received further information on or about June 20.

Claimant last worked on June 21. The employer discharged her on June 23 for misrepresenting her leave of absence. Claimant denies she misrepresented her leave.

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on June 23, 2011.

The employer knew claimant applied for a leave period from May 6 to May 24 at the time of the initial request that was two-weeks prior to that date, as this is as far-out as she was scheduled. The doctor's note dated May 19 does not release her to return to work on that date; it only states she is released to return to work without restrictions. The doctor (provider) signed the certification on May 26, and whether there was additional information added during subsequent fax communications is not discernible from viewing the document.

There is no evidence claimant misrepresented any documentation in requesting or leave or after she received HR approval on May 10. Whether she did or did not lose her leave request documents has nothing to do with the medical certification form that comes from her provider.

Neither that form or the doctor's note is definitive that claimant is released to return to work on May 19 or any other date until her return to work on May 24. The employer delayed until June 23 to conclude claimant had misrepresented her leave period thus allowing her to work for this period. There is no current act of misconduct.

DECISION:

The department decision dated July 14, 2011, reference 01, is affirmed. The claimant was not discharged for misconduct on June 23, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs