

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ALICE WEICK
1915 ASBURY RD
DUBUQUE IA 52001-4167**

**FINLEY HOSPITAL
c/o HUMAN RESOURCES DEPT
350 N GRANDVIEW
DUBUQUE IA 52001**

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**Appeal Number: 06A-UI-07525-HT
OC: 06/25/06 R: 04
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Alice Weick, filed an appeal from a decision dated July 19, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on August 28, 2006. The claimant participated on her own behalf and was represented by Attorney Matthew Glasson. The employer, Finley Hospital, participated by Human Resources Director Karla Waldbillig and Vice President of Nursing Services Kathy Ripple and was represented by Attorney Sabra Rosener. Exhibits One, Two, Three, Four, Five, Six and A were admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Alice Weick was employed by Finley from October 1, 1975 until June 21, 2006. She was a full-time registered nurse.

During contract negotiations between the employer and the Service Employees International Union (SEIU), the collective bargaining unit representing the nursing staff, the employer became aware of a recorded statement being broadcast on the public radio stations. It was recorded by Ms. Weick and she stated her name and the fact she had been a nurse at Finley for 30 years. It expressed "concerns" by the nurses that the employer was not always putting patients first, that it continued to increase profits while patient satisfaction scores "continued to decline." The message further alleged the employer admitted its nurses were underpaid and that nurses were leaving employment with Finley faster than they could be replaced. The message ended with a request that members of the public call John Knox, the CEO, and tell him they supported the nurses "and it was time he did too."

This message was broadcast a number of times between June 15 and 21, 2006, although the employer did not know exactly how many. Vice President of Nursing Services Kathy Ripple and Human Resources Director Karla Waldbillig investigated the matter and transcribed the announcement for closer study. Ms. Weick was questioned on June 21, 2006, as to whether she had made the recording and whether she agreed with the statements. She admitted to both and then was sent back to work while the employer did further investigation.

Ms. Weick recorded the message at the request of Union Organizer Bradley Van Waus but did not check any of the statements for accuracy before making the recording. Retroactively she reviewed information which had been provided to Mr. Van Waus by the hospital negotiating team to support her statements and declared she believed them to be correct at the time she made the radio announcement. However, the employer had provided to Ms. Weick, in February and in April 2006, statements, facts and figures which contradicted the allegations made in the radio statement.

The employer considered the claimant to have violated provisions of "Service Excellence Professional Expectations" which the claimant had received on June 3, 2005. The final provision of that document states employees are to "act as an ambassador" of the employer and to "represent the organization positively in the workplace and in the community." She was discharged June 21, 2006.

REASONING AND CONCLUSIONS OF LAW:

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant made publicly broadcast allegations that the employer was increasing its profits while patient satisfaction scores "continue to decline." This has not been substantiated as the figures provided by the employer showed a temporary decline but then an improvement in these scores, the most recent information having been provided to the claimant, which she ignored. The allegations that Finley "admitted its nurses are underpaid" are not supported anywhere in any of the testimony or documentation. There is also substantial evidence that the number of nurses hired exceeded the number of nurses who ended their employment. The raw data provided by the claimant is only the number of vacancies, and this is not an adequate indication of the actual number of hires as compared to vacancies.

The claimant admitted she did not check any of the statements in the announcement for accuracy prior to recording the message. She apparently relied on the person or persons who wrote the statement, but she is the one who put her name to allegations which cannot be substantiated. This was reckless and unprofessional. Although the claimant asserted the purpose of the message was to encourage listeners to call Mr. Knox and express their support for the nurses, the actual intent appears to be aimed at causing alarm and dismay in the hearer, and discourage that person from seeking medical help at Finley.

The claimant's ill-considered actions in recording the radio message without sufficient confirmation violated the duty of and responsibilities an employer may reasonably expect from its employees. It is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of July 19, 2006, reference 01, is affirmed. Alice Weick is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/pjs