

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNEMARIE E GOGERTY

Claimant

APPEAL NO. 12A-UI-02431-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA DEPARTMENT
OF HUMAN SERVICES/WOODWARD**
Employer

**OC: 01/22/12
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Annemarie Gogerty, filed an appeal from a decision dated February 28, 2012, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on March 28, 2012. The claimant participated on her own behalf. The employer, Woodward, did not participate.

ISSUE:

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

FINDINGS OF FACT:

Annemarie Gogerty was employed by Woodward from September 1, 2010 until January 20, 2012 as a full-time treatment program manager. On January 9, 2012, she was informed by Supervisor Tracy Riley she was being suspended pending further investigation as to whether she had worked the required hours. She is salaried at 40 hours per week.

On January 11, 2012, she was interviewed by Investigator Shelly Anderson. During the time period from December 23, 2011 through January 9, 2012, the claimant and her supervisor had agreed she would only work 20 hours per week because she had her children during the holiday. She could not account as to how the additional hours would be credited, either unpaid or vacation. It was determined she had not seen any of her clients during that time but Ms. Gogerty asserted there was no specific frequency of visits ever established. In addition, the investigator asked her if she ever got her driver's license renewed. She had discovered in the first part of December 2011 it had expired in January 2011. She had not renewed it because her car was not working well enough for her to pass the test even though she knew her job requirements mandated a valid license.

On January 19, 2012, she met again with Ms. Anderson to discuss whether or not she had met with Ms. Riley on January 3, 2012, because Ms. Riley had stated they had. Ms. Gogerty stated she had not met with anyone on that day.

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.

The administrative law judge finds some of the claimant's statements questionable, especially as to the frequency of visits required to the clients. But, the employer did not participate to rebut any of her assertions or to prove she willfully and actively refused to perform her job duties as required or was negligent in any respect. There is no proof she submitted her time sheet with incorrect information or claimed hours she did not work. Without evidence from the employer on these matters, the claimant's testimony is accepted without rebuttal. There is no proof of misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of February 28, 2012, reference 01, is reversed. Annemarie Gogerty is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw