

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA A COBB
Claimant

APPEAL NO. 07A-UI-03739-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEN MEMORIAL HOSPITAL
Employer

**OC: 05/21/06 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Allen Memorial Hospital (Allen), filed an appeal from a decision dated April 5, 2007, reference 02. The decision allowed benefits to the claimant, Barbara Cobb. After due notice was issued, a hearing was held by telephone conference call on May 8, 2007. The claimant participated on her own behalf. The employer participated by Acute Care Manager Carol Freeman and Human Resources Director Nathan Stucky.

ISSUE:

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

FINDINGS OF FACT:

Barbara Cobb was employed by Allen from January 8 until February 19, 2007, as a weekend package registered nurse in the acute care area. On February 4, 2007, Acute Care Manager Carol Freeman met with the claimant to discuss her 30-day evaluation. There were many areas in which the claimant's performance was unsatisfactory and unprofessional. Ms. Cobb stated she would try to improve, but when she was asked if she thought the job was "a good fit," she said she did not know.

On February 14, 2007, Ms. Cobb contacted Ms. Freeman and said her doctor had recommended she take two weeks off from work due to her chronic depression, and determine whether she could do the job as required. On February 19, 2007, Ms. Freeman and Human Resources Director Nathan Stucky requested the claimant to come to the facility for a meeting, at which time she was discharged, as the employer did not consider her to "be a good fit" for the job.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case, the claimant's performance was not to the satisfaction of the employer, but there is no evidence of any willful and deliberate refusal to perform to the best of her ability. She was not "catching on" and was not "a good fit" for the job. Failure to perform to the employer's satisfaction is not misconduct and benefits are allowed.

DECISION:

The representative's decision of April 5, 2007, reference 02, is affirmed. Barbara Cobb is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw