

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA M NEILSSEN
Claimant

APPEAL NO. 10A-UI-03274-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 01/24/10
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Mercy Hospital, filed an appeal from a decision dated February 17, 2010, reference 01. The decision allowed benefits to the claimant, Patricia Neilssen. After due notice was issued a hearing was held by telephone conference call on April 14, 2010. The claimant participated on her own behalf. The employer participated by Human Resources Business Partner Anne Dennis and Training Center Coordinator David Filipp.

ISSUE:

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

FINDINGS OF FACT:

Patricia Neilssen was employed by Mercy Hospital from June 20, 2005 until January 27, 2010 as a part-time CPR/ACLS instructor.

On December 14, 2009, Ms. Neilssen taught a course in adult CPR. One student attended the course but it became evident she was in the wrong class and should have been in a health care provider (HCP) course. Another instructor assisted the student to get the instruction for the HCP certification. The employer felt this was inappropriate because this student was taking the HCP course for the first time and should have more contact hours than was provided, even though she passed the test with a good grade.

Ms. Neilssen was scheduled to teach another course for 16 hours of continuing education units (CEUs) for some of the doctors. It was scheduled over two days, January 19 and 20, 2010. There were three attendees and three instructors. The course material was covered in only eight hours on the first day and the next day's class was cancelled. Ms. Neilssen signed two sets of documents for the CEU credits, one for 16 hours and one for 8 hours and the administrative assistant for Training Center Coordinator David Filipp was to give the documents to him so he could decide how many credits should be certified. The class roster still listed the class as being scheduled for 16 hours over two days, but Ms. Neilssen stated this was the way

it was customarily done, that the roster states the scheduled days, not necessarily the days or hours of actual instructor/attendee contact.

The employer acknowledged two sets of documents for the CEU credits were submitted to him but he felt she could not have covered the necessary course material in only eight hours. He based this on the opinion of an American Heart Association representative in Texas he contacted about the matter. Ms. Neilssen had contacted a representative in Iowa about the same subject and that person acknowledged if there were three instructors and three attendees, the material could be covered in eight hours.

The claimant was discharged on January 27, 2010, by Mr. Filipp, for falsification of the training certifications.

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 has given consistent and credible testimony regarding the reasons she certified course work for the attendees. The student involved in the December 2009 class did receive the necessary instruction in a one-on-one situation and passed the required test. The attendees in January 2010, covered all the necessary material in a faster time than usual because the

instructor/student ratio was one to one. She left it to the discretion of the training coordinator whether he wanted to grant 16 or 8 hours of credit for the course.

The employer has failed to prove by a preponderance of the evidence that the claimant willfully and deliberately acted contrary to its best interests. She legitimately believed the course work had been completed fully and successfully by the attendees. An error in judgment is not misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of February 17, 2010, reference 01, is affirmed. Patricia Neilssen is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs