

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL A TORGERSON
Claimant

APPEAL NO. 09A-UI-03803-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

OC: 02/08/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 3, 2009, reference 01, which denied benefits based upon her separation from Central Iowa Hospital Corporation. After due notice, a hearing was scheduled for and held on March 27, 2009. The claimant participated personally. Although duly notified the employer did not respond to the hearing notice and 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:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed by Central Iowa Hospital Corporation from April 2003 until February 6, 2009 when she was discharged from employment. The claimant held the position of clinical floater on a part-time basis and was paid by the hour. Her immediate supervisor was Becky Curtiss.

The claimant was discharged during a meeting on February 6, 2009. The meeting was held to determine whether Ms. Torgerson had complied with a directive to secure proper radiological licensing. The claimant had been off work when a previous licensing had expired and had been required to obtain proper licensing to continue in employment. The claimant had been given 30 days to do so and was informed that she was expected to have the proper licensing by the February 6, 2009 meeting. Although the claimant presented the proper licensing during the meeting she was nonetheless discharged because another individual who is employed by the Board of Health was not available for consultation. Ms. Torgerson supplied copies of licensing and believed that she had complied with all requirements necessary to maintain her employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits. It does not.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than what is actually produced it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this case the claimant participated personally and provided sworn testimony testifying that she had complied with all necessary requirements to obtain her radiological licensing and further testified that she had done so. The claimant testified that she presented the licensing at the meeting held on February 6, 2009 but nonetheless was discharged. There being no evidence to the contrary the administrative law judge must conclude the employer has not sustained its burden of proof in establishing intentional disqualifying misconduct on the part of this claimant.

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.

For the reasons stated herein, the administrative law judge concludes that misconduct in connection with the work has not been shown. Benefits are allowed, if otherwise eligible.

DECISION:

The representative's decision dated March 3, 2009, reference 01, is reversed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs