

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA C MINJARES
Claimant

APPEAL NO. 13A-UI-11583-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GYPNUM CREEK HEALTHCARE INC
CAREAGE OF FORT DODGE
Employer

OC: 09/15/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 9, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on December 5, 2013. The claimant did participate and was represented by Joshua A. Gaul, Attorney at Law. Employer did participate through Brett Assay, Administrator and was represented by Sam Krause, of Thomas & Thorngren. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a certified nurse's aide beginning on December 16, 2011 through September 19, 2013 when she was discharged. The claimant had been given copies of the employer's policies and procedures. On September 19 the employer was meeting with the claimant to discuss two issues: first, that she brought her young children to work with her on August 31 and second, that she left work without permission that same day. The employer did not intend to discharge the claimant merely to give her another written warning. Immediately before the meeting on September 19 the employer again learned that the claimant had left work earlier that day without permission. The employer still did not intend to discharge the claimant, just to give her a warning. It is not unreasonable for an employer to require that employees not bring their children to work with them, nor is it unreasonable for an employer to require that employees leaving the premises notify a supervisor or manager before they leave work.

The claimant alleges that the week before she had been given permission by Denise, one of the nurses to leave work early on September 19 without even notifying the nurse or manager on duty. When Mr. Assay spoke to Denise, she denied giving the claimant permission to violate the policy. During the meeting it became clear to Mr. Assay that the claimant was flat out refusing in the future to follow the work rules he was giving her, that is not to leave work early

without permission and not to bring her children to work. The claimant became hysterical crying and arguing and refusing to sign the written warning. The written warning clearly indicates that by signing the claimant was not agreeing to the warning, only that she had been given a copy and the opportunity to present her comments. The claimant began to accuse Mr. Assay of treating her differently because of his religion and alleging that other employees were allowed to bring their children to work and to come and go as they pleased. Mr. Assay reassured the claimant she was not being treated any differently. As the claimant continued to protest and would not sign the warning, nor would she indicate that in the future she would follow the rules, Mr. Assay determined he had no choice but to discharge the claimant. The claimant was discharged for her refusal to indicate that in the future she would refrain from bringing her children to work or that she would not leave work without permission.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is reasonable for an employer to require employees to leave their children at home and to require that any employee leaving the facility obtain permission prior to leaving. The administrative law judge is persuaded that the

claimant did not have permission to bring her children to work nor to leave early without even telling her supervisor. The claimant's allegations simply are not believable. An employer is not obligated to allow employees to bring their children to work. The claimant admitted that she did not think Mr. Assay was going to discharge her when the meeting started. The claimant was discharged for her continued refusal to indicate that she would not bring her children to work and that she would not leave early without getting permission to do so. The employer had given the claimant every opportunity to change her behavior and to comply with the rules. The claimant's obstinate refusal to even indicate she would comply with the policy going forward is sufficient job-connected misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The October 9, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css