

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-11812-R
OC: 10-10-04 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Cristi L. Crooks, filed a timely appeal from an unemployment insurance decision dated October 29, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, an in-person hearing was held in Des Moines, Iowa, at the claimant's request, on November 22, 2004 with the claimant participating. The claimant was represented by Teresa Jones, paralegal for Iowa Legal Aid. The employer, Mercy Hospital, did not participate in the hearing because no one appeared for the in-person hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time emergency communications secretary from February 19, 1998 until she was discharged on October 14, 2004. The claimant's duties as emergency communications secretary included taking incoming calls to the emergency room including calls from clinics and hospitals and also making calls and paging physicians. The claimant was discharged for taking a call on October 8, 2004 that she allegedly should have referred to a nurse or physician. On that day, the claimant received a telephone call from a physician's assistant at Carroll Hospital. The physician's assistant wanted to send a patient to Mercy Hospital for a neurological problem. The physician's assistant thought the patient had suffered a stroke. The claimant, as was her general practice, took the phone call and filled out a patient referral slip. The claimant customarily fills out such a slip and then files it and then removes the patient referral slip when the patient arrives and calls a physician. When the claimant took the telephone call from the physician's assistant, the claimant believed that the physician's assistant was just inquiring about whether the patient should see a neurologist. The claimant informed the physician's assistant that the patient could be taken to the emergency room and that the patient would then see an emergency room doctor who would then determine whether a neurology consult was necessary. The claimant accordingly filled out a patient referral slip. The patient arrived. The emergency room physician saw the patient and determined that a neurology consult was not necessary. The patient was upset because the patient wanted to see a neurologist. The emergency room physician called the physician's assistant. The claimant was concerned and afterward, spoke to the emergency room physician. He was not upset with the claimant but suggested that next time she pass such a call on to someone else but provided no assistance as to who that someone else would be. The claimant also consulted the charge nurse who was equally not upset with the claimant. The claimant was then off work but was called on October 13, 2004 and asked if she could come in the next day, October 14, 2004. The claimant was also off work that day as the claimant only worked weekends and asked if she could come in on October 15, 2004. The claimant was informed that she would have to come in on October 14, 2004. The claimant did so and was informed that she was discharged for taking the above telephone call and not immediately referring it to a nurse or a physician. The claimant was not given any elaboration on what she should have done differently other than to refer the call to a nurse or physician. The claimant had never received any specifically related warnings or disciplines.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant credibly testified, and the administrative law judge concludes, that the claimant was discharged on October 14, 2004. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code section 96.6(2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer did not appear at the hearing or participate in the hearing and provide sufficient evidence of deliberate acts or omissions on the part of the claimant constituting a material breach of her duties and/or evincing a willful or wanton disregard of the employer's interests and/or in carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct. The claimant credibly testified that she was discharged for allegedly improperly taking a call on October 8, 2004 from a physician's assistant in the Carroll Hospital. The claimant testified that it was her practice to take such calls and to fill out a patient referral slip which she did. The claimant believed that the physician's assistant who called her was merely inquiring about neurological testing for a patient. The claimant informed the physician's assistant that the claimant could come to the emergency room and an emergency room physician would see her and then determine whether a neurological consult was necessary. The patient arrived and was seen by an emergency room physician and a determination was made by the emergency room physician that a neurological consult was not necessary. The claimant was upset by this. The emergency room physician called the physician's assistant. The claimant spoke to both the emergency room physician and the charge nurse and neither was upset but suggested the claimant next time pass off that phone call to someone else. No directions were given as to how the claimant should have passed off this phone call. In the absence of any evidence to the contrary, the administrative law judge concludes that claimant's

behavior here was not a deliberate act constituting a material breach of her duties nor did it evince a willful or wanton disregard of the employer's interests nor was it carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. The administrative law judge notes that part of the claimant's duties was to take such telephone calls and prepare a patient's referral slip. The claimant did so. It may, in retrospect, have been unwise for the claimant to have taken this call when the claimant should have passed the phone call off to someone else. However, in the absence of any evidence to the contrary, the administrative law judge concludes that, at most, the claimant's act was an isolated instance of negligence or a good faith error in judgment or discretion and is not disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged but not for disqualifying misconduct and, as a consequence, she is not disqualified to receive 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, and misconduct to support a disqualification from unemployment insurance benefits must be substantial in nature. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). The administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant her disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

DECISION:

The representative's decision of October 29, 2004, reference 01, is reversed. The claimant, Cristi L. Crooks, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible, because she was discharged but not for disqualifying misconduct.

tjc/kjf