

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

THERESA TIJERINA
2207 CAPITOL
DES MOINES IA 50317

CENTRAL IOWA HOSPITAL CORP
c/o HUMAN RESOURCES
1313 HIGH ST STE 111
DES MOINES IA 50309-3119

TERESA JONES
IOWA LEGAL AID
1111 – 9TH ST STE 380
DES MOINES IA 50314-2527

Appeal Number: 04A-UI-11470-ET
OC: 10-03-04 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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 20, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 16, 2004. The claimant participated in the hearing with Legal Assistant Teresa Jones. Amy Williams, Human Resources Business Partner, participated in the hearing on behalf of the employer. Claimant's Exhibits A and B were admitted into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer advocate for Central Iowa Hospital Corp. from August 28, 2000 to October 5, 2004. She was discharged for unsatisfactory work performance. On September 30, 2004, she misidentified a patient during registration by attaching incorrect patient information to a sample. The claimant received a verbal warning February 4, 2004, and written warnings April 6, May 26 and July 8, 2004, because of patient identification errors. The employer's policy states that four warnings within a rolling 12-month period would result in termination. The claimant was retrained May 26, 2004, but continued to make errors. She was experiencing stress in her personal life and had asked to be moved to the day shift or placed on the phones. She knew her job was in jeopardy and tried to improve her performance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. The issue is not whether the employer was right or even had any other choice other than to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce. IDJS, 425 N.W.2d 679 (Iowa App. 1988). The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). While the claimant exceeded the acceptable error level and her performance did not meet the employer's expectations, she was experiencing a stressful personal situation and the evidence does not establish that the claimant intentionally failed to perform her job in a satisfactory manner. The claimant knew her job was in jeopardy and it appears she tried to perform to the best of her ability but still made errors. Under these circumstances, the administrative law judge concludes the claimant's behavior does not rise to the level of disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

DECISION:

The October 20, 2004, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

je/tjc