

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHAUNA L JONES**  
Claimant

**APPEAL NO. 07A-UI-07346-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL  
ATTN HUMAN RESOURCES**  
Employer

**OC: 08-06-06 R: 02  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Shauna L. Jones filed an appeal from a decision of a representative dated July 19, 2007, reference 02, which denied benefits based upon her separation from Mercy Hospital. After due notice was issued a hearing was held by telephone on August 15, 2007. Although Ms. Jones provided a telephone number, she was not available at the number provided. The employer participated by Mr. Eddie Brown and Ms. Ann Schmidt. Exhibits One through Five were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for intentional misconduct in connection with her work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 14, 2006 until June 27, 2007 as a clinic/patient liason. Ms. Jones was employed on a full-time basis. Her immediate supervisor was Ann Schmidt.

Ms. Jones was discharged from her employment with Mercy Hospital when she was unable to perform the duties of her job to a level of competency expected by the employer. Prior to discharging Ms. Jones the employer had warned and counseled the claimant on numerous occasions. After observing and working with the claimant for an extended period of time her immediate supervisor, Ann Schmidt, concluded that the claimant was not “capable” of performing her job. Prior to discharging Ms. Jones the employer suggested that the claimant attempt to find other employment with a different employer.

## **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes based upon the evidence in the record that the claimant was not discharged for intentional disqualifying misconduct but was discharged based upon her inability to perform her duties for reasons that were beyond the claimant's control. The evidence in the record establishes that Ms. Schmidt, the claimant's immediate supervisor, worked with the claimant directly and observed the claimant in the performance of her duties for an extended period. Based upon the observations of Ms. Schmidt, Ms. Schmidt came to the conclusion that the claimant was not capable of doing her job due to lack of ability. Although the employer worked with Ms. Jones for an extended period attempting to provide additional training and suggested the claimant attempt to find other employment, the employer nonetheless reached the decision to terminate the claimant based upon the claimant's continuing inability to perform her job duties.

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 based upon the evidence in the record that the claimant was not discharged for intentional disqualifying misconduct but because she did not have the ability to perform the duties of her job. Poor performance due to inability is not intentional misconduct, therefore, the administrative law judge must conclude the claimant's separation took place under nondisqualifying conditions. Benefits are allowed, if otherwise eligible.

**DECISION:**

The representative's decision dated July 19, 2007, reference 02, is hereby reversed. The claimant was discharged under nondisqualifying conditions. Benefits are allowed, providing Ms. Jones meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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