

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TEMEKA R REED

Claimant

APPEAL NO. 13A-UI-11859-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION

Employer

OC: 09/29/13

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Temeka Reed, filed an appeal from a decision dated October 18, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 13, 2013. The claimant participated on her own behalf and with Latisha Nash and Dulinda Campbell. The employer, ABCM, participated by Human Resources Coordinator Tiffany Adams and Health Services Supervisor Brooke Eighmey.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Temeka Reed was employed by ABCM from August 4, 2009 until October 1, 2013 as a part-time certified nursing assistant (CNA) working the third shift. At the time of hire she received a copy of the employee handbook which set out the company policies. One of those policies prohibits the possession or use of a personal cell phone on duty unless the employee receives specific permission from a supervisor or the cell phone is needed in the performance of their job.

Ms. Reed received documented verbal warnings on March 15 and 20, 2013, for having a cell phone in her possession and for initially refusing to relinquish it.

On September 27, 2013, Health Services Supervisor Brooke Eighmey, was at the nurses' station waiting for other third shift employs to arrive for a staff meeting. Ms. Reed came to the desk and picked up her purse where she had put it behind the copy machine. Ms. Eighmey said she was not to leave her purse at the nurses' station and she had been talked to about it before. Ms. Reed became terse and said she was "not in the mood for this" this morning. Ms. Eighmey reminded the claimant of the staff meeting and was again told she was "not in the mood" for the meeting. She became more upset and accused Ms. Eighmey and the Project Coordinator

Michelle Moore of “making up rules” whenever they wanted. The employer reminded Ms. Reed that the third shift had requested the staff meeting.

When the claimant and other third shift staff were in Mr. Eighmey’s office Ms. Reed kept making the same sort of comments that she was not in the mood, she had had a difficult night and had to clean up bowel from a resident and the resident’s room.

The claimant continued to be loud and obstreperous until the director of nursing came into the office and had to request the noise to decrease two or three times. The meeting ended and everyone went home, but Ms. Eighmey wrote up an incident report and referred it to Human Resources Coordinator Tiffany Adams. After interviewing participants and witnesses the employer called Ms. Reed into the office on October 1, 2013, to question her about the incident.

Ms. Reed was largely unresponsive, simply denying everything. She was discharged at the end of the meeting by Ms. Adams and Brianna Dumer.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant denied all of the conduct of which she was accused on September 27, 2013, but could provide no explanation as to why Ms. Eighmey would fabricate the incidents. The administrative law judge finds the claimant’s testimony to have less weight as she denied many

things in the hearing which she later admitted, such as receiving the cell phone policy, getting the warning about use of cells phones, and being told the specific reason she was discharged.

Given the inconsistency of the claimant's testimony the employer's testimony is given more weight. The record establishes the claimant was discharged for disruptive, insubordinate and unprofessional conduct in the work place. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of October 18, 2013, reference 01, is affirmed. Tameka Reed is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css