

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY R FORD
Claimant

APPEAL NO. 09A-UCFE-00002-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**VETERANS ADMINISTRATION CENTRAL
IOWA HEALTH CARE**
Employer

**OC: 12/21/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Tammy R. Ford filed a timely appeal from an unemployment insurance decision dated January 23, 2009, reference 01, that disqualified her for benefits. After due notice was issued, a telephone hearing was held February 19, 2009, with Ms. Ford participating. The employer, Veterans Administration Central Iowa Health Care, did not provide a name and telephone number of a witness.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

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: Tammy R. Ford was employed by Veterans Administration Central Iowa Health Care from March 30, 2006 until she was discharged December 19, 2008. She last worked in the laundry. She was discharged for dating an outpatient. While the Veterans Administration has various rules prohibiting dating of co-workers and clients of its facilities, the facility at which Ms. Ford was employed has not enforced that rule uniformly in the past.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer did not offer any evidence. The claimant acknowledged violating the policy but gave several examples of the policy going unenforced, even when management was aware of the violation. The administrative law judge reasons that if the policy had not been enforced in the past, the claimant would not have been aware that her behavior would result in the loss of her job. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated January 23, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs