

**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-00874-ET
OC 12-14-03 R 04
Claimant: Appellant (1)**

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 January 16, 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 February 16, 2004. The claimant participated in the hearing. Heidi Kahly-McMahon, Human Resources Manager and Mary Ann Myers, Hospice Supervisor, participated in the hearing on behalf of the employer.

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 hospice registered nurse for Visiting Nurse Association from February 4, 2002 to December 19, 2003. She worked from Saturday at 8:00 a.m. to

Monday at 8:00 a.m. On March 24, 2003, the claimant was counseled for failure to return calls to patient families and go out on visits and was instructed again regarding how she could eliminate the patients and families perceptions that she was inconsiderate and uncaring. On July 5, 2003, a family reported that they had to call the claimant several times asking her to make a home visit because the patient was having difficulty breathing. The patient's wife told the employer that when she told the claimant about her husband's breathing, the claimant said, "What do you want me to do, breath for him." The patient's wife also stated that when the claimant did eventually visit, she showed up wearing tight, short, denim shorts and a revealing shirt, did not stay very long and did not show any compassion. On July 12, 2003, the employer received a death call and a supervisor went to the patient's home to check the claimant's response time and clothing. The claimant did not call the family and arrived one hour and seven minutes after receiving the call. She explained her tardy response by saying she had a referral but the employer pointed out that a referral should only take five to ten minutes and she should have at least called the family to say she was running late. On July 17, 2003, the claimant received a written warning for poor response time, poor attitude with patients/families and inappropriate dress during work hours. Although the claimant denied the charges, the employer told her it was placing her on a final warning. On September 30, 2003, the claimant received a final written warning for refusing to make a visit, not calling patients to check their condition, being difficult to reach, demonstrating an uncaring attitude and not meeting the employer's standards of behavior. On December 13, 2003, the employer received a complaint that the claimant was rude and uncaring after a nursing home called to report a patient was dying and the claimant said she was busy and did not call or show up. She also failed to return phone calls from three patients. On December 18, 2003, Hospice Supervisor Mary Ann Myers left the claimant a voice mail stating she talked to the supervisor and wanted the claimant to attend a meeting with the employer at 9:00 a.m. December 19, 2003, at which time the claimant's employment was terminated. The claimant testified she believes she was fired because of a December 18, 2003, newspaper article regarding her December 16, 2003, arrest for child endangerment. Ms. Myers left the claimant a message indicating she read the article and assumed the claimant was the person named. The claimant was concerned that the article could result in the loss of her job and Ms. Myers told the claimant her job was not in jeopardy because of the article. The employer denies that the article was the reason for the claimant's discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 employer received several complaints regarding the claimant's demeanor and attitude toward patients and families, her failure to call or visit patients and her response time, all of which are extremely important aspects of being a hospice nurse. The claimant was counseled about her behavior and received verbal and written warnings but her attitude and performance did not improve. The final written warnings put the claimant on notice that a further incident could result in termination. While the claimant argues that her termination was the result of the article in the paper about her arrest on child endangerment charges, the complaints received by the employer about the claimant's actions the weekend of December 13 and 14, 2003, in combination with the previous incidents, establish a sufficient basis for the employer's decision to terminate the claimant's employment, without consideration of her arrest. The claimant's actions December 13 and 14, 2003, were not isolated incidents and her conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The January 16, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/kjf