

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE J HODGES

Claimant

THE UNIVERSITY OF IOWA

Employer

APPEAL NO: 13A-UI-13170-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/03/13

Claimant: Appellant (1)

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated November 26, 2013, reference 01, that held she was discharged for misconduct on November 7, 2013, and benefits are denied. A telephone hearing was held on December 18, 2013. The claimant participated. Mary Eggenburg, Benefits Specialist, and Ellen Twinam, HR Director, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on October 16, 2009, and last worked for the employer as a full-time medical assistant on November 7, 2013. The employer has an emergency patient treatment parking lot near the building for treatment. There is a posted sign at the entrance to the lot that parking is limited to patients.

The employer received a report claimant and her employee-husband was parking in the emergency lot. It began an investigation about October 28. The employer noted emergency room staff gives a patient a code in order to exit the lot.

Claimant admits there were two occasions where she was a passenger in her husband's vehicle when he parked in the emergency lot. She recalls this happened in late October. She saw the sign at the lot entrance that parking was for patients only, and violators could be towed or fined. She expressed her concern to her husband about the towing cost risk. Claimant did not know about how her husband got the code to exit.

The employer learned during the investigation claimant had a paid parking permit for another lot. It considers parking in the lot to be likened to an act of stealing. Claimant received a benefit to be closer to the building where she worked rather than commuting from her paid permit lot. Although claimant had not been previously disciplined, the employer discharged her and her husband on November 7.

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 administrative law judge concludes employer established claimant was discharged for misconduct on November 7, 2013 for violation of policy.

Claimant knew due to the posted warning sign that it was a violation subject to towing and fine to park in the patient only emergency lot. Whether she considered the act to be a policy violation likened to stealing is not the determinative factor(s) any more than she was a passenger in a vehicle driven by her husband.

By entering the lot with her driver-husband, claimant deliberately violated the warning sign. She received a benefit that was intended for employer patients. She knew it was wrong. She did this on at least two occasions. While she denies she knew about the exit code, she would have observed her husband using it to leave the lot.

Although claimant had not been previously warned about this conduct, the misconduct is substantial to deny benefits. The consequence of the deliberate violation is to deny an emergency patient a parking area where imminent treatment could be a life-saving issue.

DECISION:

The department decision dated November 26, 2013, reference 01, is affirmed. The claimant was discharged for misconduct on November 7, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs