

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA S BICKET
Claimant

APPEAL NO. 13A-UI-06196-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 04/21/13
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's May 17, 2013 decision (reference 01) that concluded Debra Bicket (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 8, 2013. The claimant participated personally. The employer participated by Mary Eggenburg, Benefits Specialist, and Dale Winnike, Nurse Manager. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 13, 2000, as a full-time nursing unit clerk. The claimant did not receive the employer's handbook. The claimant scanned medical documents for the unit. She had minimal training but a number to call if she had training questions. The claimant was unaware that she had to look at the content of the medical record for nurses errors prior to scanning. On November 7, 2012, the employer issued the claimant a two-day suspension for performance issues regarding scanning documents. On March 25, 2013, the employer issued the claimant a five-day suspension for performance issues regarding scanning documents. The employer did not notify the claimant that further infractions could result in termination from employment. The claimant's performance did not improve with time, reprimands, or training.

On March 26, 2013, the claimant scanned a document into a patient's folder that had the patient's name on a sticker at the top. Elsewhere on the document a nurse put a different patient's sticker on the document in error. On April 18, 2013, a claimant was entering a room that she thought did not contain a patient. The nurse told her to use hand sanitizer. At that point the claimant realized there was a patient in the room. The nurse screamed at the claimant within the vicinity of patients and visitors. The claimant used the hand sanitizer. Two registered

nurses reported to the employer that the claimant said, "I'm not fucking using hand hygiene.: The claimant and a nursing unit clerk denied that the claimant made that remark. The employer terminated the claimant on April 24, 2013, for using vulgarity on April 24, 2013, and for scanning the document on March 26, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because she was an eye witnesses to the events for which she was terminated. In addition, the claimant provided one written statement to support her case. The employer provided no witnesses or statements.

DECISION:

The representative's May 17, 2013 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css