

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNA MARTENSEN**  
Claimant

**APPEAL NO. 08A-UI-03337-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLEX PHYSICAL THERAPY LLC**  
Employer

**OC: 03/02/08 R: 12  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jenna Martensen filed an appeal from a representative's decision dated March 26, 2008, reference 01, which denied benefits based upon her separation from Flex Physical Therapy. After due notice was issued, a hearing was held by telephone on April 21, 2008. Ms. Martensen participated personally. Participating as witnesses for the employer were Mr. Mike Uhrlaub and Mike Salerno. Exhibits One through Four were received into evidence.

**ISSUE:**

At issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 5, 2006 until February 29, 2008 when she was discharged for violating company policy by having other workers do her work assignments and by questioning physical therapists' work and undermining patient relationships by suggesting exercises or therapy that had not been prescribed by the physical therapists. The claimant held the position of physical therapist technician and had been warned by the employer about these matters prior to her discharge.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence establishes that the claimant was discharged under disqualifying conditions. It does. The evidence in the record establishes that Ms. Martensen had been specifically warned by the employer to follow employer's rules with respect to following work directives, avoiding making disparaging statements about physical therapists and their instructions to clients and the claimant's responsibility to support the physical therapists and their decisions. The claimant was discharged when the claimant violated these rules after being warned.

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.

For the reasons stated herein the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated March 26, 2008, reference 01, is hereby affirmed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are

withheld until the claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, providing that she is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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