

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE M WEIS

Claimant

APPEAL NO. 07A-UI-07078-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NURSEFINDERS OF DES MOINES

Employer

**OC: 06/03/07 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated July 10, 2007, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 6, 2007. The claimant participated personally. The employer participated by Mike Adams, branch director. Exhibits One and Two were received into evidence. Exhibits Three and Four were offered but not received.

ISSUE:

The 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 having considered all the evidence in the record, finds: The claimant last worked for this employer on October 7, 2006, as a patient companion working 11:00 p.m. until 7:00 a.m. Ms. Weis completed her assignment as a patient companion. Subsequently, Nursefinders of Des Moines received a statement from a nurse assigned to the facility indicating that that person believed that the claimant had been “asleep” at work. Although the claimant had completed the “spot job,” Nursefinders of Des Moines desired to contact Ms. Weis to provide “counseling” about sleeping on the job. When the temporary employer was unable to contact the claimant, the company made a management decision not to offer additional assignments in the future to Ms. Weis.

It is the claimant’s position that these statements regarding sleeping on the job were fabricated by a nurse who personally disliked the claimant and were unfounded. Ms. Weis reported the problem with the nurse to her temporary employer. At the time claimant received her check from Nursefinders of Des Moines, the employer indicated no problem with the claimant’s most recent assignment.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the evidence in the record, that the claimant had completed a "spot job" temporary assignment for this employer and that the employer had indicated at that time no problem with the claimant's performance of her duties. The evidence in the record establishes that Nursefinders of Des Moines was unwilling to provide the claimant additional assignments in the future because Ms. Weis was not available to receive "counseling" based upon an after-the-fact allegation made by a nurse at the facility where Ms. Weis had recently been assigned. At the time the claimant had completed her most recent assignment, the employer indicated no problem with the claimant's performance of her duties. The claimant was employed on a temporary basis and had fulfilled the contract of hire when that job was completed. No misconduct in connection with the work was established at the time of separation. After being separated due to lack of work upon the completion of her most recent assignment, the claimant had no obligation to accept other assignments and the employer had no obligation to offer the claimant additional assignments. The claimant's failure to be available for counseling after the fact did not constitute disqualifying misconduct in connection with the claimant's most recent assignment.

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.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits

that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

For the reasons stated herein, the administrative law judge finds that the claimant's separation from employment was non-disqualifying. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated July 10, 2007, reference 02, is hereby affirmed. The claimant was separated under non-disqualifying conditions and is eligible to receive unemployment insurance benefits, provided that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw