

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER M BURLINGAME**  
Claimant

**APPEAL NO. 10A-UI-17624-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL IOWA HOSPITAL CORP**  
Employer

**OC: 11/14/10  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 13, 2010 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 26, 2011. Claimant participated. Employer participated through Human Resources Business Partner Ashley Wirtjes.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as an RN from 2006 and was separated from employment on November 17, 2010. She failed to complete a mandatory annual RN skills competencies test as directed and reminded in the 2009 performance review. Claimant had at least eight opportunities for skills days between October 1, 2009 and the September 30, 2010 plus the extension until November 15, 2010 because of her medical absences. She was scheduled to but did not attend in July while on short-term disability from June 21 through August 9. She did not seek a skills set testing date between her return to work on August 10 and her next absence period beginning November 6, 2010, in spite of being told in writing that the skills set must be completed by September 30 and being given a deadline extension to November 15, 2010. She was given a second level warning on October 20, 2010 by her supervisor, Peggy Black, reminding her of the November 17, 2010 deadline. She was absent from work due to illness from November 6 through 15, but did not make arrangements to test between October 20 and November 6, 2010. Although she claimed she had tried to make arrangements informally while passing in the hallway and did not receive a response from the contact unit based educator, Amy, she did not press the issue up the chain of command to their mutual supervisor, Shelly. She contacted Amy on November 9 with a question about completing the test on or off the clock. Amy referred her to management and did not hear back from her until November 15. On November 15 she texted Amy "I need to do that skills thing. I just realized today is the 15th."

## 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 § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

In spite of her medical absences, for which she received a month and a half extension, claimant's repeated failure to arrange for her annual skills test after having been repeatedly reminded and warned rises to the level of disqualifying job related misconduct. Benefits are denied.

**DECISION:**

The December 13, 2010 (reference 02) 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.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/kjw