

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY A THOMAS
Claimant

APPEAL NO. 11A-UI-03175-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LISA ETNYRE
ABCM CORPORATION
Employer

OC: 01/23/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Kelly Thomas, filed an appeal from a decision dated March 7, 2011, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 4, 2011. The claimant participated on her own behalf. The employer, ABCM, participated by Human Resources Manager Angie Hobscheidt and Administrator Holly Brink.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Kelly Thomas was employed by ABCM from January 25, 2010 until January 11, 2011 as a full-time CNA. The employer's policy provides for discharge of any employee who receives four written warnings for any combination of policy violation.

Ms. Thomas received written warnings on May 28 and December 10, 2010, for absenteeism, and a verbal counseling on December 30, 2010, for having her personal cell phone in her pocket while on duty. On January 26, 2011, she received a written warning because she again had her cell phone in her pocket while on duty. On January 28, 2011, she received a fourth written warning for failing to report suspected dependent adult abuse. This was the final written warning and she was discharged.

The claimant would not have been discharged if her only offense was failing to report the suspected abuse. The incident occurred when a resident mentioned to her something that had happened with another staff member. Ms. Thomas did not consider that to be abuse, although she acknowledged it was not up to her to make that determination. In addition, the resident was confused because she mentioned going out to dine with her husband that afternoon, and her husband had been dead for some time. That is the reason the claimant failed to report to the charge nurse, although another staff member made the report about eight hours later.

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 claimant knew her job was in jeopardy as a result of the warning she had received for various policy violations. The third written warning could have been avoided entirely if she had just kept her cell phone in her purse and not been carrying it around with her. The final warning was given at the conclusion of the investigation regarding her failure to report the resident's claim of abuse.

The employer has the obligation to provide a safe environment for all residents, and this includes all staff reporting any suspected abuse the dependent adults. Kelly Thomas was discharged for several failures to follow company policies. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of March 7, 2011, reference 01, is affirmed. Kelly Thomas is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw