

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRY D SINN
Claimant

APPEAL NO. 12A-UI-13168-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NORTH LIBERTY FAMILY
HEALTH CENTER**
Employer

**OC: 08/26/12
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, North Liberty Family Health Center, filed an appeal from a decision dated October 23, 2012, reference 02. The decision allowed benefits to the Claimant, Sherry Sinn. After due notice was issued a hearing was held by telephone conference call on December 6, 2012. The claimant participated on her own behalf. The employer participated by Assistant Office Administrator Darcy Fahrenkurg and Office Administrator Denise Kaestner.

ISSUE:

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

FINDINGS OF FACT:

Sherry Sinn was employed by North Liberty Family Health Center from June 3, 1996 until October 1, 2012. She began as a full-time chart clerk but in June 2010 the employer went to an electronic health record (EHR) system. Ms. Sinn was then to “scan” information into the computer system.

In spite of training on the system the claimant never seemed to be able to fulfill her required duties. She had other employees available to ask for help and advice but continued to be unable to do the job adequately.

In April 2012, Ms. Sinn was notified the job would go to a part-time status effective June 1, 2012. The employer hoped she would be able to “keep up” with her duties then but these hopes were not realized. Finally on August 16, 2012, the employer informed the claimant the scanner job would go back to full time on October 1, 2012, and she would no longer have a job.

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 was essentially discharged for failure to do her job. Inability to do a job to the satisfaction of the employer is not misconduct. The employer made the decision back in April 2012 due to her lack of progress in learning the EHR system. The fact she was unable to perform the functions of this job even after training, "cheat sheets" and other assistance indicates a lack of ability rather than misconduct. There was no current, final act of misconduct which precipitated the decision to discharge as required by 871 IAC 24.32(8), but an assessment of her progress by the owners, the doctors and the administrative staff. Without a current, final act of misconduct disqualification may not be imposed.

DECISION:

The representative's decision of October 23, 2012, reference 02, is affirmed. Sherry Sinn is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/bjc