

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE D RARICK
Claimant

APPEAL NO. 09A-UI-04121-C

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEE COUNTY
Employer

OC: 01/11/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lee County filed an appeal from a representative's decision dated March 3, 2009, reference 01, which held that no disqualification would be imposed regarding Michelle Rarick's separation from employment. After due notice was issued, a hearing was held on March 30, 2009 in Burlington, Iowa. Ms. Rarick participated personally. The employer participated by Kathy McIntyre, Program Director, and Julie Schilling, Administrator.

ISSUE:

At issue in this matter is whether Ms. Rarick was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Rarick was employed by Lee County from August of 2003 until January 23, 2009. She worked approximately 30 hours each week as a home health aide. On December 18, 2008, a voice message was left asking her to contact Kathy McIntyre regarding a client complaint. In response, Ms. Rarick sent her an email indicating she preferred not to talk to her directly at that time. Ms. Rarick was experiencing a great deal of anxiety as a result of being assaulted by a client on December 16.

Ms. Rarick was left a voice message by Julie Schilling on December 19 asking her to call. Rather than call, Ms. Rarick sent an email indicating she did not feel like talking to anyone. She indicated that, if there was something urgent, the employer was to let her know. The employer also left messages for her on December 26. The employer sent her emails on December 26, December 29, and January 2. In an email to the employer on January 5, Ms. Rarick indicated she was "going through some things." The email indicated she was still suffering with the aftermath of the assault.

Ms. Rarick did not want to talk directly with the employer because she feared the discussion might involve details of the assault. She also suggested that she might feel under attack if the

conversation became “aggressive.” As a result of her failure to return calls or text messages, Ms. Rarick was discharged.

REASONING AND CONCLUSIONS OF LAW:

Ms. Rarick was discharged from employment. An individual who was discharged is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Rarick was discharged for not maintaining contact with the employer as requested in voice messages, emails, and text messages. Conduct caused by inability or incapacity is not deemed misconduct within the meaning of the law. 871 IAC 24.32(1).

Ms. Rarick’s failure to return calls to the employer began on December 18, two days after she was assaulted in the home of a client. The administrative law judge is satisfied that her failures were due to the emotional turmoil following the assault rather than a deliberate and intentional disregard of the employer’s standards. It was not unreasonable for her to want to avoid situations where she might feel she was under attack because of work-related problems. The evidence failed to establish that Ms. Rarick deliberately engaged in a pattern and practice of conduct that she knew was contrary to the employer’s expectations. While the employer may have had good cause to discharge her, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. For the reasons stated herein, benefits are allowed.

DECISION:

The representative’s decision dated March 3, 2009, reference 01, is hereby affirmed. Ms. Rarick was discharged by Lee County but intentional and substantial misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css