

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHEILA A HORKSTROM**  
Claimant

**APPEAL NO. 13A-UI-07004-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PINNACLE HEALTH FACILITIES XVII**  
Employer

**OC: 05/19/13**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 10, 2013, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 19, 2013. Claimant participated with subpoenaed witnesses third shift weekend nurse Monica Foust and part-time third shift nurse LPN supervisor Nancy Houston. Employer participated through DON Nicole Strange. Employer's Exhibit 1 was received.

**ISSUE:**

Was the claimant discharged for disqualifying job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a CNA and was separated from employment on May 22, 2013. On May 21, 2013, she failed to document cares provided to residents. When confronted on May 22, she said she had to leave early so was unable to finish documentation because her 14-year-old son was back in the hospital after having been there a couple of weeks earlier. She had not been warned to notify her supervisor if she could not complete the documentation before leaving for the day. She had been warned in writing on May 7, 2013 about 84 percent completion of records after she was given a chance to complete them since the issue was discovered on May 2, 2013. (Employer's Exhibit 1, p. 4) On May 2, the toilets flooded so she had no break or time to complete documentation. Her son was in the hospital on May 3. She had been warned in writing on November 21, 2012, and on January 20, 2012, about not completing documents and records accurately or on time. (Employer's Exhibit 1, pp. 6, 7) Claimant's headset used for completing documentation was broken so she went in to work off shift at least three times to borrow Foust's headset. Houston also let claimant borrow her headset multiple times. Claimant had notified Strange that her headset was broken when on day shift several months prior to separation. She also left notes for Strange on her office door. There were no other working headsets not assigned to others in the building and she was told they were on order. Nurses worked directly on the computers so could not interrupt them to enter her documentation that way.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which

claimant was discharged was related primarily to the lack of a working headset and her minor son's hospitalization. While claimant did have a history of untimely documentation, these factors on the two most recent occasions establish that her delay was for good cause reasons sufficient to excuse the delay and her conduct was not intentional. The employer alleged that claimant was warned that she must notify Strange if she could not complete documentation before leaving for the day but the written warnings do not bear that out. Thus, the employer has not met the burden of proof to establish misconduct. Benefits are allowed.

**DECISION:**

The June 10, 2013 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs