

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTI K FUNK
Claimant

APPEAL NO. 09A-UI-06812-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LAKES REGIONAL HEALTHCARE
Employer

**Original Claim: 03/29/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lakes Regional Healthcare (employer) appealed a representative's April 23, 2009 decision (reference 01) that concluded Kristi Funk (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 28, 2009. The claimant participated personally. The employer was represented by Josh Burrows, Hearings Representative and Attorney, and participated by Joni Mitchell, Director of Nursing, and Sarah Roche, Director of Human Resources.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on November 8, 2004, as a full-time emergency room manager. On September 19 and 26, 2008, the employer issued the claimant a verbal warning and probation for bringing anonymous staff concerns to the employer and not divulging the source.

The claimant fell on the employer's property on November 11, 2008. She completed paperwork to notify the employer of the injury. The employer did not pay for the claimant's medical bills. The claimant notified the employer of back pain and that she needed an epidural.

On March 24, 2009, the claimant had an appointment for an epidural for the work-related injury. The claimant's significant other works for the employer. The claimant told her significant other that she was having an epidural and he offered to take time off to transport her home.

On March 26, 2009, the employer issued the claimant a reprimand. The reprimand stated that the claimant asked the significant other's supervisor for time off to transport her. The claimant was upset that the reprimand was inaccurate. The employer told the claimant she had to sign the document. The claimant refused. It was the end of her shift and the claimant was angry.

She left the room, slammed the door, and went home. On March 26, 2009, the employer suspended her. On March 31, 2009, the employer terminated the claimant for insubordination on March 26, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The claimant was angry because the employer was making untrue statements. In addition, the statements concerned a doctor's appointment for which the employer did not take responsibility.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to

that separation. Based on the employer's failure to provide sufficient evidence of job-related misconduct, the claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's April 23, 2009 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw