

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAY A FLANDERS

Claimant

APPEAL NO. 13A-UI-13575-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM

Employer

OC: 10/27/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated December 5, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone hearing was held on January 6, 2014. The claimant participated personally. The employer participated by Brandi Tiesman, Director of Human Resources, and Katie Hovey, Clinic Supervisor. The record consists of the testimony of Brandi Tiesman; the testimony of Katie Hovey; the testimony of Gay Flanders; and Employer's Exhibits 1-9.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a health care provider. The claimant worked as a clinical office secretary in the radiology department. The claimant was hired on November 15, 1999. The claimant's last day of work was October 24, 2013. She was terminated on October 24, 2013.

There were three incidents that led to the claimant's termination. The first occurred on October 3, 2013, when a complaint was made by an emergency room nurse about the claimant's short and rude tone when answering a question. The second incident took place on October 4, 2013, A new employee told the claimant's supervisor that a previous employee left because of the claimant. The third incident concerned a complaint about the claimant and her working relationship with the technicians. The claimant's tone of voice was negative and this would impact teamwork and morale. The claimant was aware that the employer was investigating complaints that had been made about her and that her job was in jeopardy.

The claimant had been given a final warning on May 2, 2013, about her rude and belittling behavior. Her conduct was contrary to Genesis Values. (Exhibit 7) The employer stated that the claimant had "not fulfilled her duty to produce an outcome, that being appropriate, professional, and respectful treatment of all she interacts with while performing her duties and serving as a representative of Genesis." (Exhibit 7)

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes unsatisfactory job performance. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The employer has not provided sufficient evidence to show misconduct. The claimant was terminated because she was viewed as belittling and rude. These are subjective grounds because what one person perceives as "rude" may not in fact be rude. The claimant did acknowledge she could be short and to the point when dealing with individuals. Isolated complaints about an employee's demeanor, at least in this case, fall into the category of job performance. While the employer may have had good business reasons to terminate the claimant, those reasons are not disqualifying misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated December 5, 2013, reference 01, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css