

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

THERESA M BURNS
1506 'J' ST SW
CEDAR RAPIDS IA 52404

MERCY MEDICAL CENTER
701 – 10TH ST SE
CEDAR RAPIDS IA 52403

Appeal Number: 04A-UI-11965-HT
OC: 10/10/04 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Theresa Burns, filed an appeal from a decision dated October 27, 2004, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 1, 2004. The claimant participated on her own behalf. The employer, Mercy Medical Center (Mercy), participated by Director of Human Resources Jerry Truemper.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Theresa Burns was employed by Mercy from February 24, 2000 until October 12, 2004. She was a full-time housekeeper.

The employer's policy states an employee will be discharged for six unscheduled absences in a six-month period. Ms. Burns received a final written warning on September 24, 2004, which stated her job was in jeopardy if there were any further unscheduled absences. On October 11, 2004, she called in prior to her shift to report she would be absent because she was sick. On October 12, 2004, she was discharged by housekeeping supervisor Kent Miller.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

871 IAC 24.32(1)a, (8) provide:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

For an individual to be disqualified from receiving unemployment benefits because of misconduct, there must be a current, final act of misconduct which precipitates the discharge. The claimant's final absence was due to a properly reported illness, which is not considered to be misconduct as it is not volitional. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Disqualification may not be imposed.

DECISION:

The representative's decision of October 27, 2004, reference 01, is reversed. Theresa Burns is qualified for benefits provided she is otherwise eligible.

bgh/kjf