

**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**

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**Appeal Number: 05A-UI-08896-MT
OC: 07/24/05 R: 02
Claimant: Appellant (1)**

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 for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 19, 2005, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 15, 2005. Claimant participated personally and was represented by Rick Olson, Attorney at Law. Employer participated by Andy Bagnall, Director of Physician Services; Dave Ness, Vice President; and Vilene Savage, Employee Relations Specialist. Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 3, 2005.

Claimant was discharged on June 3, 2005 by employer because claimant failed to inform the employer that she was put on probation by the Board of Nursing due to criminal charges and deferred judgment in 2004. The Board of Nursing April 22, 2005 informed claimant that she was on probation. Claimant was required to have the employer provide monthly reports to the Board of Nursing concerning claimant's work. Claimant failed to tell the employer of the reporting requirement. Claimant was on probation with the employer. Claimant was to keep the employer informed of her criminal probation and consequences thereof. Claimant's job required a nursing license. Claimant did not lose her nursing license. Claimant was given an order by the nursing board April 22, 2005 to immediately submit a copy of the nursing board order to the employer. Claimant told the employer of the order May 27, 2005. Claimant never gave the employer a copy of the order.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant was discharged for misconduct.

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.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning failing to give the employer a copy of the nursing board order. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant did not inform the employer of a nursing board order relating to her criminal charges. But for the criminal charges there would have been no nursing board order. Claimant had an obligation to provide a copy of the order to the employer immediately. Claimant failed in that response. Delaying notice for over 30 days is an intentional act that qualifies as misconduct. Failing to provide a copy of the order is also misconduct. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated August 19, 2005, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

mdm\kjf