

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALISSA M MUECKE
Claimant

APPEAL NO. 13A-UI-12718-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WADZINSKI EYE CLINIC
MICHAEL WADZINSKI MD PC
Employer

OC: 10/20/13
Claimant: Appellant (1)

Section 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 12, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 30, 2013. The claimant did participate. The employer did participate through Carla Bentley, Practice Administrator. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a medical receptionist and transcriptionist full time beginning March 2007 through October 23, 2013 when she was discharged. The claimant had been given a copy of the employer's handbook and policy book which put her on notice that the employer had the option to skip any step in the disciplinary process they so choose. The claimant was given multiple warnings about some performance issues including, eating at her desk, having her cell phone at her desk, burping at her desk, spending too much time at a coworker's desk, yelling down the hallways and failure to manage her time when there was no dictation for her to perform. She was given a written warning on August 1 or 2 for all of the behaviors listed above. On October 4, Ms. Bentley met with the claimant. She told the claimant she was pleased with her improvement in keeping up with the dictations, but specifically told the claimant she still needed to improve on the behaviors listed in her August warning. The claimant was also on notice that she was expected to provide excellent customer service to patients and to others. Because the claimant had improved on her dictation efficiency, she was given a pay raise. At hearing the claimant admitted that despite being told not to do so she had continued to eat and use her cell phone at her desk.

During the week prior to her discharge, the employer received two complaints from two different patients that the claimant had been rude to them. The employer's biggest referral source is Dr. Jones' practice. During the week before her discharge, Dr. Jones called and spoke to

Ms. Bentley to personally complain about how the claimant was treating his office staff and patients he referred to the practice. Ms. Bentley informed Dr. Wadzinski. On October 23, Dr. Jones' office staff again complained about the treatment they received from the claimant. Based upon the multiple complaints from patients, the complaint from Dr. Jones and his staff, and the claimant's failure to change her behavior with regard to the issues listed in her August warning, the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's repeated failure to follow the instructions from her employer including not eating at her desk, not using her cell phone at her desk and her rude treatment of Dr. Jones' office staff coupled with multiple patient complaints, after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The November 12, 2013, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs