

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE M CLARK
Claimant

APPEAL NO. 10A-UI-13513-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE MEDICAL GROUP
Employer

**OC: 08/29/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Nicole Clark, filed an appeal from a decision dated September 22, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 15, 2010. The claimant participated on her own behalf. The employer, John Deere Medical Group, participated by Administrator Roxanne Paper.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Nicole Clark was employed by John Deere Medical Group from November 20, 2008 until August 27, 2010 as a full-time medical assistant. She began receiving warnings for poor work performance in August 2009. She was not properly documenting patients' information, exams were not set up correctly, she was below average in the number of patients she was setting up in exam rooms, and the doctors complained of lack of "follow through" and personal phone calls.

Other warnings given in May and July 2010 were for the same problems plus attendance. She would frequently be tardy due to taking her children to school. The final warning was given August 9, 2010, and she was advised her job was in jeopardy. After each of the warnings, her performance would improve for a short time and then begin to decline again.

On August 26, 2010, she failed to update the medical history of a patient even though the necessary information was contained in the same medical records. She also had not updated another patient's immunization records even though, again, that information could be found in the medical records. These problems were brought to the attention of Lead Nurse Chasidy Mejia-Biswell by two different doctors. The lead nurse discussed the problems with Administrator Roxanne Paper, and Ms. Clark's disciplinary history was reviewed. It was determined she should be discharged and the claimant was informed the next day by Ms. Mejia-Biswell.

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.

The claimant had been advised her job was in jeopardy as a result of her poor work performance. She was capable of performing her job as required, as evidenced by the fact she would improve her performance after the warnings but then allow it to decline. Ms. Clark maintained she needed additional training but could not explain why, after receiving a warning that explained how the employer wanted her to do the job, she would make the same errors again.

The record establishes the claimant was discharged for failing to do her job to the satisfaction of the employer even though she was capable of doing so. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of September 22, 2010, reference 01, is affirmed. Nicole Clark is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw