

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CYNTHIA L DENCKLAU**  
Claimant

**APPEAL NO. 14A-UI-01863-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 09/22/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Cynthia Dencklau (claimant) appealed a representative's February 13, 2014, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Care Initiatives (employer) for leaving work without the employer's permission. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 11, 2014. The claimant participated personally. The employer indicated prior to March 11, 2014, that it did not wish to participate in the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 7, 2013, as a full-time certified nursing assistant. The claimant signed for receipt of the employer's handbook.

The claimant worked Thanksgiving 2013 and should have been paid holiday pay in her December 20, 2013, paycheck but was not. The claimant had to argue with the employer to be paid the wages she was owed and receive them in her January 3, 2014, paycheck.

On January 5, 12, 14, 2014, the claimant complained to the director of nursing about a male co-worker who was not doing his job and telling her what to do. The director of nursing said she would take care of it. On January 15, 2014, the claimant had another problem with the male co-worker and complained to the director of nursing. The claimant went about her work and attended to all the residents assigned to her. Then the director of nursing told the claimant to attend to all the residents assigned to the male co-worker. The director of nursing told the claimant she did this because she was tired of hearing the claimant's bitching.

On January 11, 2014, the cook claimed to have no sauce to prepare a meal and asked the claimant if she could borrow her car. The claimant gave her key to the cook. Somehow the key was in the possession of the director of nursing and the director of nursing took the key home with her. The claimant did not give permission for the director of nursing to have the key. The key was returned to the claimant by the director of nursing's daughter.

On January 26, 2014, the claimant was handing out snacks to residents and a female co-worker complained that she was not recording it correctly. The female co-worker also said she, herself, had not learned how to record snacks. Later, the claimant needed assistance with residents and called for the female co-worker through her headset. The female co-worker did not respond to the claimant's call for assistance. The claimant went into the hall and did a shout out for the female co-worker. The claimant saw a light in a room and went into the room. The charge nurse was in the room and asked the claimant what she was doing. The claimant explained. The charge nurse said, "You can leave. You make me sick". The claimant immediately left the premises at 4:42 p.m. When she arrived at home she called the administrator's home and left a message. On January 27, 2014, the employer left the claimant a message stating she was terminated. The employer instructed the claimant to appear and sign termination papers. The claimant went to work to sign papers and try to explain. The employer would not listen to her explanation for why she left work.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The claimant followed the directions of the charge nurse and was terminated for doing so. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative’s February 13, 2014, decision (reference 02) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs