

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE K ARMAS
Claimant

APPEAL NO. 10A-UI-08589-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: 05/16/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 15, 2010, reference 01, which denied benefits based upon the claimant's separation from Genesis Health System. After due notice, a telephone hearing was held on August 3, 2010. The claimant participated personally. Participating on behalf of the claimant was Mr. Nicholas Hoyer, Legal Intern. The employer participated by Linda Sanders, Human Resource Department Representative.

ISSUE:

The issue in this matter is whether the claimant was discharged for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Julie Armas was employed by Genesis Health System from June 1, 1999 until May 21, 2010 when she was discharged for violating the company's parking policies on May 4, 2010.

On May 7, 2010 Ms. Armas was called to a meeting about two parking violations that had occurred on May 3 and May 4, 2010. The claimant believed that she had had only one violation on May 4. The claimant at that time had parked in an unauthorized area because she was having difficulty finding a parking spot and was on a final warning for attendance violations. Ms. Armas was not discharged at the conclusion of the May 7 meeting but was told that the tickets/violations "could be your undoing."

Ms. Armas was allowed to continue to work for the company for an additional two-week period before being discharged on May 21, 2010. Ms. Armas did not violate any other company rules during the two-week period. She was allowed to continue performing services for the company before a management decision was made to terminate the claimant from her employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record shows a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

871 IAC 24.32(8) provides:

(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.

The evidence in the record shows that the claimant's most recent infraction of company policy took place on May 4, 2010 when Ms. Armas parked in an unauthorized area because she did not want to report to work late and violate a final warning that she received for attendance. The evidence further shows that the employer was aware of the violation and met with Ms. Armas on May 7, 2010. Although aware of the violation the employer did not discharge Ms. Armas from employment at that time but allowed the claimant to continue working for approximately two additional weeks before discharging the claimant on May 21, 2010. The claimant's record does not show any disqualifying conduct on the part of Ms. Armas during the intervening weeks.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that the claimant was not discharged for a current act of disqualifying misconduct on May 21, 2010. The claimant's discharge at that time was thus at and for the convenience of the employer for no disqualifying reason. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 15, 2010, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reasons. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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