

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAULA J ACKLIE
Claimant

APPEAL NO. 13A-UI-03412-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 02/10/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's March 15, 2013 decision (reference 01) that concluded Paula Acklie (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 18, 2013. The claimant participated personally. The employer was represented by John Garb, Hearings Representative, and participated by Steve Dowd, Administrator, and Maureena Prakash, Director of Nursing.

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 June 24, 2011, as a full-time registered nurse mentor. The employer trained the claimant for three or four weeks at the time of hire on staff training. The claimant signed for receipt of the employer's handbook on June 24, 2011. The employer issued the claimant written warnings for lack of daily communications, teaching, and mentoring to staff. The claimant did not sign for receipt of the warnings. The employer notified the claimant that further infractions could result in termination from employment.

The claimant was told to perform at least 70 audits per week in preparation for a State audit. The claimant thought more would be perceived as better. The director of nursing discovered that the claimant did 100 audits in one week and thought this was too many but did not discuss this with the claimant.

One of the topics on which the claimant was supposed to train certified nurse aides was catheter care. The claimant followed her training guidelines and used mannequins when residents were not available. On February 13, 2013, the director of nursing met with aides and told them the training was wrong. When the aides and the claimant asked the director of nursing to demonstrate proper catheter care, she declined.

On February 14, 2013, the claimant met with certified nursing assistants and the director of nursing for an audit on catheter care. The director of nursing did not think the claimant taught the aides correctly. The employer terminated the claimant on February 14, 2013.

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 provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is conflicting. The administrative law judge finds the claimant's testimony to be more credible. The employer's testimony was internally inconsistent.

DECISION:

The representative's March 15, 2013 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs