

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA L MELVIN
Claimant

APPEAL NO. 11A-UI-11293-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER-CLINTON INC
Employer

OC: 07-10-11
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 22, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 11, 2011. The claimant did participate. The employer did participate through Diane Grant, Director of Human Resources.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a pharmacy technician full time beginning September 29, 1980 through July 1, 2011 when she was discharged. The claimant was told prior to July 2010 that she had to become licensed as a pharmacy technician due to a change in state law in order to keep her job. She took the test on June 17, 2010 and did not pass it. She knew that she was required to take and pass the test by July 1, 2011. Once a person fails the test they are required to wait two months before retaking the test. The claimant's supervisor Will Eden told her and all other employees that they had to pass the pharmacy technician licensure test by July 1, 2011 in order to keep their jobs. As the months passed after the claimant's failed test in July 2010 Mr. Eden asked the claimant if she had signed up to take the test again and if she needed assistance in studying. The claimant refused assistance in studying and assured Mr. Eden that she would get the test passed by July 1, 2011. The test is offered every day of the week. The claimant procrastinated in getting signed up to take the test again. She did not retake the test until June 30, 2011 and she did not pass. The claimant had almost two years to study and pass the test but due to her own procrastination did not do so. She was warned as late as November 10, 2010 that she had to pass the test before July 1, 2011.

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 § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant had ample opportunity to take the licensure test and knew that if she did not pass the test before July 1, 2011 she would lose her job. Her own procrastination in studying for the test and not signing up early enough for the test led to her not meeting the employer's clear expectation that she pass the test by July 1, 2011. Under these circumstances the claimant's failure to meet the employer's expectation is sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The August 22, 2011 (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/css