

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY S CHANCELLOR

Claimant

HEARTLAND HEALTH MANAGEMENT

Employer

APPEAL NO: 10A-UI-10397-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/06/10

Claimant: Appellant (1)

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 14, 2010, reference 01, that held she was discharged for misconduct on June 7, 2010, and benefits are denied. A telephone hearing was held on September 8, 2010. The claimant did not participate. Lisa Dehney, D.O.N., participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment as a full-time C.N.A. on May 22, 2008, and last worked for the employer on June 7, 2010. The claimant was issued a final warning and placed on suspension on May 18, 2010 for inappropriate behavior and use of profanity. The claimant was warned a further incident would result in employment termination.

On June 6, the claimant became angry, swung her gait-belt that broke a thermostat cover, and used profanity in the presence of resident family members and staff. When confronted by the employer on June 7, she admitted her unprofessional behavior. The employer discharged the claimant for her conduct in light of the prior warning.

The claimant failed to respond to the hearing notice.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on June 7, 2010, for a repeated incident of unprofessional conduct in light of a recent warning/suspension.

The claimant knew the employer policy due to a prior warning and suspension, and her repeated violation for the same type of offense constitutes job disqualifying misconduct.

DECISION:

The department decision dated July 14, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on June 7, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css