

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER L HANSEN
Claimant

APPEAL NO. 11A-UI-16485-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NURSEFINDERS OF DES MOINES
Employer

**OC: 11/13/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

Nursefinders of Des Moines filed a timely appeal from an unemployment insurance decision dated December 19, 2011, reference 01, that allowed benefits to Amber L. Hansen. After due notice was issued, a telephone hearing was held January 27, 2012, with Ms. Hansen participating and presenting additional testimony by Starla Pindell. The employer provided the name and telephone number of a witness. That number was answered by a recording at the time of the hearing. The administrative law judge left instructions for the witness to call while the hearing was in progress if she wished to participate. There was no further contact from the witness.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Amber L. Hansen was employed by Nursefinders of Des Moines from February 2011 until she was discharged on or about June 7, 2011. The final incident leading to discharge occurred on June 3, 2011. Ms. Hansen was unable to work her shift that evening because of illness. She reported the absence to the employer. Believing that Ms. Hansen was not truly ill, the employer discharged her.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with the employment. 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. The employer did not participate. The testimony of the claimant and her witness establish that the final incident leading to discharge was the claimant's absence due to a medical condition. The evidence persuades the administrative law judge that the absence was properly reported to the employer. Absence due to a medical condition properly reported to an employer cannot be considered an act of misconduct. See 871 IAC 24.32(7). No disqualification may be imposed following a discharge if the final incident leading to the decision to discharge was not a current act of misconduct. See 871 IAC 24.32(8).

Since the evidence does not establish a current act of misconduct, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated December 19, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw