

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELLEN L CANNON
Claimant

APPEAL NO. 08A-UI-00595-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOSPICE INC
Employer

**OC: 12/09/07 R: 03
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Ellen Cannon, filed an appeal from a decision dated January 11, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 4, 2008. The claimant participated on her own behalf. The employer, Hospice, Inc., did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Ellen Cannon was employed by Hospice, Inc., from September 25, 2006 until December 7, 2007, as the full-time bereavement coordinator. During her employment, she had never received any performance reviews and the first disciplinary action was November 21, 2007. At that time, the employer said her filing was not current and must be updated by December 15, 2007.

On December 7, 2007, Executive Director Suzanne Anderson discharged the claimant, providing her with a letter of discharge. The reasons for the discharge were failing to have her filing completed, missing charts, and a phone call of complaint from a deceased's spouse who had received a letter addressed to another person. Ms. Cannon had been working on updating her filing, but the deadline of December 15, 2007, had not yet passed. She did her filing in the chart room itself and did not know where the missing charts might be, as she did not take them from the room. The incorrectly addressed letter she did write and sign, but it was then passed on to volunteers who addressed the envelope, added inserts and the letter, then mailed it. If the letter was put in the wrong envelope, it was not done by Ms. Cannon.

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 employer did not participate in the hearing to provide any evidence to support the allegations in the letter of dismissal. There is also no evidence of a current, final act of misconduct which precipitated the discharge as required by 871 IAC 24.32(8). The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The employer has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of January 11, 2008, reference 01, is reversed. Ellen Cannon is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw