

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRIE ERLBACHER
Claimant

APPEAL NO: 12A-UI-04542-ET

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

CDS GLOBAL INC
Employer

**OC: 04-01-12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 19, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 14 and continued on May 16, 2012. The claimant participated in the hearing. Jull Murtaugh, administrative manager; Sue Grummert, senior manager of customer service; and Sharon Kroger, senior workforce manager, participated in the hearing on behalf of the employer. Employer's Exhibit One and Claimant's Exhibits A through D were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time customer service representative for CDS Global from June 27, 2011 to February 27, 2012. The claimant was absent due to reported illness January 16 through January 19, 2012. On February 20, 2012, the employer met with the claimant after reviewing her Fitness for Duty Form for the January 2012 absence. The employer does not give employees blank copies of Fitness for Duty Forms and it was not the employer's handwriting on the top portion of the form, but the claimant told the employer she had a blank form from the employer (Claimant's Exhibit A). The form was dated February 27, 2012, and stated the duration of the claimant's condition was January 20, 2012, or until she saw her physician February 23, 2012. It also appeared to the employer as if portions of the note had been Wited out. Additionally, the note was not faxed from the claimant's doctor's office to the employer but, instead, from the claimant's husband's business. The claimant told the employer the February dates on the form were in error and should have been January dates. The employer told the claimant it was going to call her doctor's office because of the irregularities on the form. On February 22, 2012, the employer contacted the claimant's treating medical provider and after speaking to the ARNP who treated the claimant, it faxed a copy of the form to her and received an email from the ARNP stating the form was not written by that office and there was no record of it in the claimant's chart (Employer's Exhibit One). The ARNP indicated

she wrote notes for the claimant August 18 and 25, 2011, and that the form looked suspicious. On February 27, 2012, the employer met with the claimant and told her the ARNP contradicted the information she provided and the note could not be verified. The employer then notified the claimant her employment was terminated February 27, 2012, for falsification of information.

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 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 copy of the Fitness for Duty Form the employer received raised suspicion because the employer never provided the form to the claimant or completed the portion it normally does and that part was not in the employer's handwriting. Additionally, the dates were off and it appeared places on the form had been altered. Finally, the treating ARNP denied writing the note and stated the office had no record of it in the claimant's chart. While the ARNP later wrote a note for the claimant stating she had been seen after August 25, 2011, and was treated January 17, 2012, she did not indicate she or the physician wrote the Fitness for Duty Form. Under these circumstances, the administrative law judge must conclude the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's

interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The April 19, 2012, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw/kjw