

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA L LOVE**  
Claimant

**APPEAL NO. 14A-UI-12584-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FINLEY HOSPITAL**  
Employer

**OC: 11/09/14**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Finley Hospital (employer) appealed a representative's November 25, 2014, decision (reference 01) that concluded Melissa Love (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 15, 2015. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Sarah Dickey, Human Resources Manager; Jan Pacholke, Director of Five Medical Surgical; and Becky Bradley, Human Resources Generalist. The employer offered and Exhibit One was received into evidence. Exhibits A and D-1 were admitted into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 27, 2013, as a part-time licensed practical nurse. The claimant signed for receipt of the employer's Policy and Procedure on August 26, 2013. The employer did not issue the claimant any warnings during her employment.

The Policy and Procedure has a Group I violation for leaving work without permission before the shift is scheduled to end. For a first offense the employee is given a first warning, a second offense would receive a second warning, and for a third offense an employee would receive a three-day suspension without pay. If an employee had four offenses, the matter would be reviewed for termination.

On November 7, 2014, the claimant started her job at 6:00 p.m. She was to work on the fifth floor and care for patients. She was not to leave the floor unless she asked permission. The claimant left the fifth floor at approximately 7:00 p.m. to speak to a hospitalist physician about a

former patient. At 7:40 p.m. the claimant's supervisor noticed the claimant was missing and began to look for her. She found the claimant almost immediately on the third floor speaking privately to the physician in a room believed to have been selected by the physician. The supervisor asked the claimant to return to her duties and the claimant did so promptly.

On November 10, 2014, the employer questioned the claimant about the events of November 7, 2014. On November 11, 2014, the employer terminated the claimant for leaving the unit while on duty and neglect of patient care. This was a Group III violation of the Policy and Procedure and an employee's first offense can result in the employee's termination.

The claimant filed for unemployment insurance benefits with an effective date of November 9, 2014. The employer participated personally at the fact finding interview on November 24, 2014, by Becky Bradley.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The employer’s Policy and Procedures foresaw the issue of employees leaving the workplace when it wrote the Group I violations. The employer elevated the claimant’s Group I violation to a Group III violation without justification. Under the employer’s Policy and Procedure the claimant could leave work at any hour three times without permission from her supervisor and not be terminated. In the case at hand, she left once for forty minutes to speak to a physician and she was terminated.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative’s November 25, 2014, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs