

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HOLLY GASKINS**

Claimant

**APPEAL NO: 17A-UI-10673-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS HEALTH SYSTEM**

Employer

**OC: 10/01/17**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 16, 2017, 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 November 6, 2017. The claimant participated in the hearing. Nicki Lear, Human Resources Coordinator, participated in the hearing on behalf of the employer.

**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 pharmacy technician III for Genesis Health System from September 23, 2013 to October 3, 2017. She was discharged for inappropriate and unprofessional behavior.

On October 1, 2017, the claimant received a phone call at her work desk. She answered and identified herself and the caller hung up. She took the phone number off caller identification, went outside on her cell phone, and called the number that misdialed the phone number on her desk because it was a Colorado area code and the claimant recognized the area code as she used to live in Colorado. The caller did not answer and the claimant proceeded to send text messages to the number. The texts were vulgar and profanity laced. She started by saying, "Just wondering why u called me an hung up...who r u Kari??!!!" The caller responded that she did not remember calling and hanging up and apologized. The claimant stated, "U just called me at work...how the fuck did you get my number???" The claimant went on to ask the caller, "Who the fuck r u.....r u fucking my husband??" The texting went back and forth until the caller ended the conversation. The caller than took screen shots and sent them to her mother who works for the employer. The caller's mother reported the claimant's conduct to the pharmacy manager and human resources became involved. After considering the situation, the employer concluded the claimant violated its code of values and terminated the claimant's employment October 3, 2017.

## 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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

A caller misdialed and accidentally called the claimant's work desk phone number. She hung up before even knowing the claimant answered and the claimant took the phone number from caller identification and attempted to call the person who initiated the call because that caller had a Colorado area code and the claimant, who was having marital problems, previously lived

in Colorado and wondered if that person was involved with her husband. Regardless of the reason the claimant tried to call the caller, there was no reason to call and then text an individual who simply dialed the wrong number and apologized in her first text back to the claimant. The caller did not call back and hang up again, she was not rude on the phone, and did not pursue the claimant by phone or text until the claimant was completely and unjustifiably rude and inappropriate with her through text messages. The claimant's action violated the employer's code of conduct.

Under these circumstances, the administrative law judge concludes 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). Therefore, benefits are denied.

**DECISION:**

The October 16, 2017, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn