

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN J GRIFFETH
Claimant

APPEAL NO. 13A-UI-09150-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JENNIE EDMUNDSON MEMORIAL
HOSPITAL**
Employer

OC: 06/30/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kathleen Griffeth (claimant) appealed a representative's July 26, 2013, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Jennie Edmundson Memorial Hospital (employer) for theft of company property. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 26, 2013. The claimant participated personally. The employer participated by Donna Wellwood, Human Resources Director; David Pahl, Team Leader; Michelle Swanson, Inventory Systems Coordinator; and Cynthia Borwick, Employee Health Nurse. The claimant offered and Exhibit A was received 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 February 16, 2004, as a part-time cleaning technician. The claimant signed for receipt of the employer's handbook on February 16, 2004. The employer did not issue the claimant any warnings during her employment. The claimant's husband worked for the employer from July 2003 to September 2009. The claimant cleaned patient rooms after they had been vacated. He was allowed to bring home discarded products so long as he was given permission by his supervisor.

On June 27, 2013, the employer learned that the claimant was using a product at home that came from the employer. The employer called the claimant in and questioned her. The claimant was confused by the questions and thought maybe the product came home after her husband's stay in the hospital. The employer investigated the claimant's explanation and found that it could not be true. The employer discontinued the product's use in 2009, before the husband's hospitalization. On July 3, 2013, the employer terminated the claimant because it assumed the claimant had stolen the product. After the termination the claimant's husband told her that he must have brought the product home when he was working for the hospital.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 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 did not provide sufficient evidence of job-related misconduct. The employer did not prove the claimant took the item from the employer. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's July 26, 2013, decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css