

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROLYN M DAVIS**  
Claimant

**APPEAL NO. 07A-UI-11064-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL**  
Employer

**OC: 11/04/07 R: 02**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Carolyn Davis filed an appeal from a representative's decision dated November 28, 2007, reference 01, which denied benefits based on her separation from Mercy Hospital. After due notice was issued, a hearing was held by telephone on December 17, 2007. Ms. Davis participated personally and Exhibits A, B, and C were admitted on her behalf. The employer participated by Eddie Brown, Employee Relations/Compliance Coordinator. Exhibits One through Eight were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Davis was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Davis was employed by Mercy Hospital from September 5, 1990 until November 1, 2007. She was last employed full time as a materials distribution technician. Her job involved taking materials and equipment to various areas in the hospital as needed.

In September or October of 2007, the employer began using Vocera, a hand-held device used for communicating with others. It is similar to a walkie-talkie. The device contains a button that is pushed in order to speak to another individual. On October 31, Ms. Davis was having a conversation with a coworker, who was in the same room as she, but did not know that her Vocera was transmitting to the labor and birthing unit. Two different employees reported that they heard Ms. Davis refer to another employee as "that motherfucker, Anthony." The two also reported that she made reference to "that bitch, Nancy, the black girl." It was also reported that Ms. Davis said that "fucking Anthony" was mad at her because she and Nancy were not talking. Finally, the two reported that Ms. Davis said "if my ass gets any bigger. . ."

Someone who overheard Ms. Davis notified her supervisor that she was broadcasting over the Vocera. Ms. Davis was then approached and notified that her Vocera was on. As a result of

the above incident, she was discharged from the employment as her statements were felt to be contrary to the employer's standards of behavior. The above matter was the sole reason for the discharge on November 1, 2007.

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

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Davis was discharged for using inappropriate language at the workplace. Ms. Davis denied that she used the term "motherfucker" in reference to Anthony or the term "bitch" in reference to Nancy. However, two separate employees gave statements indicating that she did, in fact, use those terms. Ms. Davis acknowledged during the hearing that she was upset with Anthony. The administrative law judge considers the use of such language in a hospital setting to be clearly contrary to the employer's standards.

It was Ms. Davis' contention that her statements were part of a private conversation she was having with a coworker and that there was no intent to broadcast the conversation to others in the hospital. However, even if the conversation had not been broadcast to others, it would still be unacceptable in a hospital setting. Ms. Davis knew or should have known, without benefit of prior warnings, that the use of terms such as "motherfucker," "fucking" and "bitch" would not be tolerated by the hospital. For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

#### **DECISION:**

The representative's decision dated November 28, 2007, reference 01, is hereby affirmed. Ms. Davis was discharged by Mercy Hospital for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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