

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINE E DOONAN
Claimant

APPEAL NO. 11A-UI-06465-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTFIELD VETERINARY HOSPITAL PC
Employer

OC: 03/27/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

Westfield Veterinary Hospital filed a timely appeal from an unemployment insurance decision dated April 29, 2011, reference 01, that allowed benefits to Kristine E. Doonan. After due notice was issued, a telephone hearing was held August 25, 2011 with Ms. Doonan participating. Practice Manager Jessie Cash participated for the employer. Claimant Exhibit A and Employer Exhibits One and Two were admitted into evidence.

ISSUE:

Was the claimant discharged for a current act of misconduct?

FINDINGS OF FACT:

Kristine E. Doonan was employed as a veterinary technician by Westfield Veterinary Hospital, PC from late April 2010 until she was discharged March 26, 2011. The final incident occurred on March 22, 2011. A canine patient had undergone surgery. As the animal was being prepared for discharge, Ms. Doonan asked if an oral pain medication should be prepared to send home with the dog and its owner. The request was misunderstood to be a request for permission to administer a dose of the medication prior to discharge.

Ms. Doonan's performance in the past had not been to the employer's satisfaction, but she had received no formal discipline.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

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. See Iowa Code § 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). The employer's witness was not a witness to the final incident. She testified as to what another employee had stated. That employee was not called to testify. The claimant testified under oath and subject to cross-examination that she had not asked to give the medication to the dog presently but to prepare the medication to be sent home upon the dog's release. The administrative law judge finds the claimant's direct testimony as to the final incident more credible than the employer's hearsay testimony. The administrative law judge concludes that the final incident leading to Ms. Doonan's discharge was not misconduct. Therefore, according to the rule cited above, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated April 29, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs