

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BECKY A JOSLIN
Claimant

APPEAL NO. 10A-UI-08731-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY REGIONAL MEDICAL CENTER
Employer

**Original Claim: 08/30/09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Trinity Regional Medical Center filed a timely appeal from an unemployment insurance decision dated June 14, 2010, reference 02, that allowed benefits to Becky A. Joslin. After due notice was issued, a telephone hearing was held August 5, 2010, with Ms. Joslin participating and being represented by Monte Fisher, attorney at law. Human Resources Manager Ted Vaughn participated for the employer.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Becky A. Joslin was employed by Trinity Regional Medical Center from April 16, 2001, until she was discharged May 11, 2010. She last worked as a registered nurse. She was called to the office of the human resources manager on May 11 with questions about several matters that occurred several weeks earlier. She was sent home after the meeting. At approximately 4:00 p.m. that afternoon, Mr. Vaughn told her by telephone that she was being discharged. Ms. Joslin had received discipline in the past, most recently in September 2009.

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 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. See Iowa Code section 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). Mr. Vaughn could provide no dates for the incidents discussed on the day of discharge. Ms. Joslin's testimony indicated that the incidents had occurred several weeks in the past. Mr. Vaughn did not cross examine Ms. Joslin on that issue. The administrative law judge concludes from the evidence that the employer has not established that the final incidents leading to discharge were current. Under those circumstances, the administrative law judge need not and does not rule on whether the incidents constituted misconduct. Even if they were, no disqualification could be imposed.

DECISION:

The unemployment insurance decision dated June 14, 2010, reference 02, 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

kjw/kjw