

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMI R MUGLER
Claimant

APPEAL NO. 10A-UI-03735-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LORING HOSPITAL
Employer

**Original Claim: 02/07/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 2, 2010, reference 01, which held her not eligible to receive unemployment insurance benefits based upon her separation from Loring Hospital. After due notice was issued, a telephone conference hearing was held on April 28, 2010. The claimant participated personally. The employer participated by Michael Ketcham, administrator, and Marilyn Longman, laboratory manager.

ISSUE:

At issue is whether the claimant was discharged for conduct warranting the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Tami Mugler was employed as a part-time laboratory technician for Loring Hospital from February 16, 2009, until she was separated from employment on February 3, 2010. Ms. Mugler was paid by the hour and averaged approximately 30 hours of work per week. Ms. Mugler's last day on the job was December 2, 2009.

The claimant began experiencing problems securing care for her 20-year-old daughter, who is disabled, beginning on approximately November 18, 2009, when the regular caregiver had been injured. Ms. Mugler requested that she be allowed to take time off work in order to provide care to her daughter and to attempt to secure a replacement caregiver. Loring Hospital complied, having other employees fill in for the claimant's scheduled work shifts. Ms. Mugler initially maintained regular contact with the hospital, keeping them informed of her status. Subsequently, the employer began scheduling other employees to work Ms. Mugler's scheduled hours. The claimant was kept on the employment rolls in the employer's belief that the claimant would keep them informed and soon return to work.

After the claimant had not been in regular contact with the employer for some time, the employer e-mailed the claimant on December 28, 2009, specifically requesting the claimant to write information on when she could return to work. When the employer received no response

from the claimant following the December 28, 2009 letter, the employer removed Ms. Mugler from the employment rolls because the claimant had not maintained sufficient contact nor had she returned to work.

It is the claimant's position that she stayed home to provide care to her daughter and was unable to find a substitute caregiver. The claimant believes that her last contact was by e-mail on January 4. It is the claimant's position that she had no need to contact the employer, as "nothing had changed."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's discharge took place under disqualifying conditions.

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.

In this case, the claimant was initially allowed time off work based upon the employer's reasonable expectation that Ms. Mugler would soon find a replacement caregiver and return to work. The claimant was allowed to be off work under the provision that she maintain regular contact with the employer so that the employer would know the claimant's status and would be able to properly schedule other employees. Based upon a lack of contact by the claimant on a regular basis, the employer began to regularly schedule other employees to work Ms. Mugler's

shift but maintained the claimant on the company rolls in hopes that she would return. The claimant was provided notice by the employer of her need to provide specific information and/or return to work when she received an e-mail on December 28, 2009. Ms. Mugler had no further contact with her employer after January 4, 2010. Based upon the claimant's failure to keep the employer notified of her status and/or return to work as agreed for a substantial period of time, the claimant was discharged from employment.

The administrative law judge concludes, based upon the evidence in the record, that the claimant's failure to keep the employer properly notified on a regular basis of her status and/or to return work within a reasonable time showed a disregard for the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Iowa Employment Security Act. The claimant knew or should have known that the employer expected regular reports of her status so they could gauge the claimant's return to work date and perform staffing. The claimant did not fulfill that obligation. Benefits are denied.

DECISION:

The representative's decision dated March 2, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/kjw