

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

STEPHANIE M WENDLAND  
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CHARLES CITY IA 50616

FLOYD COUNTY MEMORIAL HOSPITAL  
ATTN ADMINISTRATOR  
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Appeal Number: 06A-UI-00717-AT  
OC: 12-18-05 R: 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Stephanie M. Wendland filed a timely appeal from an unemployment insurance decision dated January 11, 2006, reference 01, which disqualified her for benefits. After due notice was issued, a telephone hearing was held February 6, 2006 with Ms. Wendland participating and being represented by James Gilliam, Attorney at Law. Personnel Director Dan Nosbisch and Radiology Director Wendy Burke participated for the employer, Floyd County Memorial Hospital.

#### 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: Stephanie M. Wendland was employed by Floyd County Memorial Hospital from July 7, 2000 until she was discharged November 30, 2005. Ms. Wendland last worked as an ultrasound technician.

Official hospital policy requires that all ultrasound procedures be approved by the hospital's radiologist or by a patient's personal physician. Informally, the hospital allows ultrasound technicians to perform ultrasound procedures on other hospital staff. Even the informal policy does not allow the procedures to be administered to non-employees without proper medical approval. On November 29, 2005, Ms. Wendland performed an ultrasound procedure after hours. The "patient" was not a hospital employee. The procedure had not been approved by that person's personal physician or by the radiologist.

Ms. Wendland knew both the official and the unofficial policy. She did not request permission from the radiologist or the individual's personal physician.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence persuades the administrative law judge that Ms. Wendland deliberately performed the ultrasound procedure without following either the written official policy or the unwritten, unofficial policy relating to hospital employees. She performed the test after hours and without billing for the use of hospital facilities and supplies. The evidence persuades the administrative law judge that Ms. Wendland intended to hide the fact that she had performed the test from her supervisor and from hospital management. This constitutes deliberate actions contrary to the employer's interest. Benefits must be withheld.

#### DECISION:

The unemployment insurance decision dated January 11, 2006, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

kkf/kjw