

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALICIA K CHARON
Claimant

APPEAL NO. 10A-UI-06853-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRIMARK PHYSICIANS GROUP INC
Employer

**Original Claim: 04/11/10
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Trimark Physicians Group, Inc. (Trimark) filed an appeal from a representative's decision dated May 6, 2010, reference 01, which held that no disqualification would be imposed regarding Alicia Charon's separation from employment. After due notice was issued, a hearing was held by telephone on June 24, 2010. Ms. Charon participated personally. The employer submitted a written statement in lieu of participation. However, the statement was not sent until June 24, the day of the hearing. Because there was no time to make a copy available to Ms. Charon prior to the hearing, the statement was not admitted.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Charon was employed by Trimark from May of 2009 until April 15, 2010 as a full-time registered nurse. She was discharged from the employment and told it was due to her job performance and attendance. On her last day, she came to work with a headache and asked if she could sit in a darkened room until she was feeling better. Permission was granted to do so. She was discharged later the same day.

Ms. Charon had received a verbal warning on March 25, 2010 for inappropriate use of her cell phone. The employer's policy prohibited the use of cell phones in open areas. Ms. Charon was using her phone to send text messages. She received a verbal warning on January 27, 2010 after a patient complained that she violated HIPAA. Areas in which she needed to show improvement were outlined with her during her performance evaluation in December of 2009. On December 18, 2009, she was suspended because of information she posted on "Facebook."

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). The employer's burden included establishing that the discharge was predicated on a current act that constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). Although the employer told Ms. Charon that attendance was part of the reason for her discharge, the employer did not provide evidence of her attendance record. Therefore, the administrative law judge cannot determine if she was excessively absent on an unexcused basis as required for a disqualification pursuant to 871 IAC 24.32(7).

The employer also cited Ms. Charon's job performance as part of the reason for the discharge. It was incumbent upon the employer to provide specific details as to the reason for discharge, as mere allegations of misconduct are not sufficient to result in disqualification from benefits. See 871 IAC 24.32(4). There is insufficient evidence in the record to determine whether Ms. Charon deliberately and intentionally engaged in conduct she knew to be contrary to the employer's standards or interests or whether her actions constituted substantial misconduct.

For the reasons stated herein, it is concluded that the employer failed to satisfy its burden of proof in this matter. While the employer may have had good cause to discharge Ms. Charon, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated May 6, 2010, reference 01, is hereby affirmed. Ms. Charon was discharged by Trimark but misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw