

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELANEE M ROBERTS
Claimant

APPEAL NO. 09A-UI-07423-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRUCE A D'AGOSTINO DDS
Employer

OC: 04/12/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bruce D'Agostino, DDS filed an appeal from a representative's decision dated May 7, 2009, reference 01, which held that no disqualification would be imposed regarding Melanee Roberts' separation from employment. After due notice was issued, a hearing was held by telephone on June 9, 2009. Ms. Roberts participated personally. Dr. D'Agostino participated as the employer.

ISSUE:

At issue in this matter is whether Ms. Roberts 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. Roberts was employed by Dr. D'Agostino from December of 2008 until April 9, 2009. She initially worked in the front of the office but became a dental assistant in February. She was discharged from the employment.

One of Ms. Roberts' duties as a dental assistant was to lay out those items the doctor would need when seeing the patient. On an occasion in March, she put out latex gloves for a patient who is allergic to latex. This information was available on the "medical alert" portion of the patient's screen. Because she did not pull up the patient's records on this occasion, Ms. Roberts did not see the screen that showed the allergy. On another occasion in March, Ms. Roberts used the incorrect cleaner on a patient's dentures, resulting in sores and ulcerations in the patient's mouth. This issue was not addressed with her during at the time of her employment.

The decision to discharge Ms. Roberts was based on statements she made during a meeting on April 9. She had requested a meeting because she felt her job was in jeopardy. She opened the meeting by asking Dr. D'Agostino whether he wanted her working there. She also made comments about an intern who worked in the office. She indicated she did not appreciate the intern spreading rumors about her. She made reference to the intern's age and that the intern

thought she was “hot shit.” The employer felt Ms. Roberts’ comments were aggressive and, based on this factor and the prior errors, the decision was made to discharge her.

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). For reasons that follow, it is concluded that disqualifying misconduct has not been established. Ms. Roberts did put out latex gloves for a patient who was allergic to latex. However, she did not have an opportunity to view the patient’s chart to know that there was an allergy as the doctor, himself, pulled the chart.

Ms. Roberts may well have used the incorrect product to clean dentures. However, this was an isolated event. Moreover, consideration must be given to the fact that this event occurred shortly after she began working as a dental assistant. It is true that Ms. Roberts expressed her feelings about the intern during the meeting of April 9. However, it was a closed-door meeting with her supervisor. If she was having work-related concerns, she had an obligation to bring them to the attention of her employer. Although she may have used a poor choice of language, her conduct did not evince a wanton or willful disregard of the employer’s standards.

It was the employer’s prerogative to discharge Ms. Roberts. Conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Ms. Roberts did not deliberately and intentionally act in a manner she knew to be contrary to the employer’s standards or interests. For the reason stated herein, benefits are allowed.

DECISION:

The representative’s decision dated May 7, 2009, reference 01, is hereby affirmed. Ms. Roberts was discharged 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/pjs