

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER L HEUBNER
Claimant

MAINSTREAM LIVING INC
Employer

APPEAL 19A-UI-07049-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/11/19
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 28, 2019 (reference 01) unemployment insurance decision that found the claimant was not eligible for unemployment insurance benefits after being discharged from work on August 12, 2019. The parties were properly notified of the hearing. A telephone hearing was held on October 31, 2019. The claimant, Jennifer L. Heubner, participated personally and was represented by Robert Peterson. The employer, Mainstream Living Inc., participated through witnesses Marcanne Lynch, William Vaugh, Abby Day and Brenda Bacon. Attorney Gary R. Fischer represented the employer. Stephanie Livingston observed on behalf of the employer. Claimant's Exhibits A through I were admitted. Employer's Exhibits 1 through 19 were admitted.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full-time as a quality assurance technician for personnel records. She was employed from March 29, 1994 until August 12, 2019, when she was discharged from employment. Claimant's job duties included overseeing the personnel file management and quality including storage, audits and maintenance of personnel records. See Exhibit 2. Claimant was responsible for ensuring the confidentiality, integrity, accuracy, daily maintenance, release of information and storage of all personnel data information in both electronic and hard copy formats. See Exhibit 2. Claimant was also responsible for tracking nurse license and CMA certifications. See Exhibit 2. Marcanne Lynch was claimant's immediate supervisor.

Claimant was required to follow documentation procedures to include accurate, honest and timely completion. See Exhibit 2. Claimant was made aware of the employer's written policy that provided falsification of records could result in termination of employment. See Exhibit 4.

On or about February 14, 2019, an employee completed the employer's professional credentials verification form ("release of information") in order for the employer to retrieve confirmation of credentials from her educational institution. See Exhibit 5. The employee typed "CNA 120" in the License # portion of the release of information form when she completed it and returned it to the employer. See Exhibit 5.

Claimant used white out on the release of information form and changed the typed "CNA 120" language to a handwritten notation of "CMA" in order to verify the CMA license the employee claimed to have received. Claimant did this without permission from the employer or without obtaining a new release of information from the employer.

On April 26, 2019, claimant emailed the falsified release of information form to Des Moines Area Community College ("DMACC") in order to obtain verification of the employee's CMA license. See Exhibit 7. As a result of sending the release of information form to DMACC, the employer learned that the employee had not obtained her CMA and was not able to continue in the position she had been hired for. This employee then separated from employment with this employer and filed a claim for unemployment insurance benefits.

The matter came to Ms. Lynch's attention when she was reviewing the former employee's records for an unemployment insurance benefits hearing. Ms. Lynch reviewed the documents and asked the claimant if she altered the release of information. On August 5, 2019, claimant admitted to altering the release of information form. See Exhibit 7. Claimant told Ms. Lynch that she altered the form without permission because she had become impatient in waiting for her co-worker to obtain the credentials. Claimant was discharged for falsification of records on August 12, 2019. Claimant had no previous discipline during the course of her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for a current act of job-related misconduct. Benefits are denied.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After considering the applicable factors listed above, and in using her own common sense and experience, the administrative law judge finds the claimant's testimony that she does not remember altering the release of information form is not credible. It is clear in claimant's email to Ms. Lynch that she admitted to altering the release of information form. Further, Ms. Lynch's testimony that the claimant verbally admitted to her that she altered the release of information form is more credible than the claimant's testimony she did not.

The employer has the burden of proof in establishing disqualifying job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa

Ct. App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

This was not an incident of carelessness or poor work performance. Claimant purposefully and intentionally altered and falsified a release of information form without permission. These actions were in violation of the employer’s known written policy. Claimant’s actions in falsifying a release of information form and using that form to obtain credentials without the permission of the employer was intentional and constitutes a substantial violation of the employer’s policies and procedures. The employer has a right to expect that an employee will not jeopardize the liability of the employer by intentionally violating reasonable policies that are established. There is substantial evidence in the record to support the conclusion that claimant’s deliberate acts constituted a material breach of her employment duties and obligations. Accordingly, the employer has met its burden of proof in establishing a current act of job-related misconduct. Benefits are denied.

DECISION:

The August 28, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for a current act of job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times her weekly benefit amount after her separation date, and provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn