

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKE D FICK
Claimant

APPEAL NO. 09A-UI-15444-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

OC: 09/13/09
Claimant: Appellant (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 14, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 16, 2009. Claimant participated. Employer participated by Cannady Fritzjunker, program supervisor; Jenny Brown, regional coordinator for respite services; and Vicky Pals, program director. The record consists of the testimony of Cannady Fritzjunker; the testimony of Jenny Brown; the testimony of Vicky Pals; the testimony of Mike Fick; and Employer's Exhibits 1-2.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case is an agency that provides services for individuals with disabilities. The claimant was hired on November 20, 2008, as a case worker. He was terminated on September 4, 2009, for leaving a consumer at home without adult supervision. The consumer was a minor and the consumer's mother had indicated to the employer that the consumer was not to be left alone without supervision from the employer. This written directive was part of the consumer's case file. The claimant was required to be familiar with the contents of consumer files if he was providing services to that consumer. The claimant did not review this consumer's file prior to providing services.

The incident in question took place on September 1, 2009. The claimant was having problems with his car. He had had difficulty getting his car started and on the morning of September 1, 2009, the car had to be jumped to get it started. The claimant picked up the consumer at school and went to the employer's offices to get advice on what to do. He spoke to Cannady Fritzjunker and Vicky Pals. It was agreed that the claimant could not let his car run while he provides services to the consumer. He was told to take the consumer home and explain to the

consumer's mother that services could not be provided that day. The claimant took the consumer home and when they arrived, the consumer's mother was not home. The consumer told the claimant that he was home alone at lot and that he did not need supervision. The claimant then left to get his car fixed.

The consumer's mother called the employer the next day to complain that her son had been left alone without supervision. An investigation was conducted. The claimant was terminated on September 4, 2009, for violation of the employer's policy. The employer had previously terminated employees if a child was left home without supervision.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The evidence in this case established misconduct. The claimant was a case worker who provided services to individuals with disabilities. He was required to be familiar with the case files of those individuals for whom he provided services. He admitted that he had not read this consumer's case file. The consumer's mother had specifically stated that her child was not to be left home alone without supervision. The claimant elected to rely on the consumer's

statement that he could be left at home alone. He did not call the employer to find out what to do if the parent was not home. The claimant's conduct in this case is a material breach of the employer's interest in providing care in accordance with a care plan and instructions of a parent. The employer had a specific policy that required the claimant to be familiar with the case file and this had been reiterated to the claimant in training. Benefits are denied.

DECISION:

The decision of the representative dated October 14, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs