

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY J WEICH
Claimant

APPEAL 21A-UI-17578-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

**OC: 06/06/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On August 10, 2021, claimant Mary J. Weich filed an appeal from the August 5, 2021 (reference 01) unemployment insurance decision that denied benefits after a separation from employment. The parties were properly notified of the hearing. A telephonic hearing was held before Administrative Law Judge Darrin Hamilton at 3:00 p.m. on Wednesday, October 6, 2021. The claimant, Mary Weich, participated. The employer, REM Iowa Community Services, Inc., participated through witness Matt Hildebaugh, Area Director; and representative Gilda Slomka. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged from employment 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, most recently as a program director, from January 26, 2015, until June 10, 2021, when she was discharged for failing to provide and ensure quality services and support to persons served.

On the evening of May 28, one of the employer's client's guardians came to the client's home (where the employer provided cares to the client) and discovered the client had open sores in his groin area. Additionally, the client had dried feces on his body, indicating he had not been properly bathed. She immediately contacted Hildebaugh and reported this issue. Additionally, the guardian reached out to claimant directly to report the issue. Claimant was on vacation at the time.

Claimant returned to work the following Monday, June 1. The employer commenced an investigation into the May 28 discovery, and claimant gave a statement regarding the cares she had provided to the client prior to going on vacation the morning of May 28. Specifically, claimant stated that she had given the client a shower on May 27 and had let him wash his groin area himself, as he performed a satisfactory job, so she did not see whether he had any sores

at that time. The employer then placed the claimant on a suspension pending the outcome of the investigation.

During the investigation, the employer discovered a number of issues. First, the employer confirmed the open sores and dried feces on the client's body. Second, the employer documented an overall lack of cleanliness with regard to the clients and the property, as well as a lack of available cleaning supplies. The employer also determined there were numerous medication errors. Finally, the employer discovered staff had not been trained properly on how to safely and effectively perform their jobs.

The employer determined discharge was appropriate in this circumstance because claimant was one of two employees who had provided the client's care over the week prior to May 28. The other employee, also a supervisory-level employee, was also discharged. Claimant had been warned in the past about improperly supervising and training her subordinates, after a client was left in his bed for an entire day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct.

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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). 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).

In this case, the claimant was discharged after one of the dependent clients who had been in her care was found to have sores and dried feces on his body. This was not only unclean but damaging to the client's health and well-being. As a program director responsible for training and supervising direct support professionals, claimant needed to model compliance with the employer's policies and procedures. Between the harm and trauma that claimant's substandard care caused the client and his guardian and the damage that claimant's lack of training and cleanliness brought to her subordinates and the work environment, the employer could no longer safely employ her. The employer has established that claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The August 5, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

March 15, 2022
Decision Dated and Mailed

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