IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CHERYL PANSEGRAU
Claimant

IOWA STATE ASSOC OF COUNTIES
Employer

APPEAL NO: 13A-UI-09968-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/21/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 21, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 30, 2013. The claimant participated in the hearing. Julie Vokoun, Interim 911 Emergency Management Coordinator; Susan Jones, Tama County Human Resources; Dennis Kucera, Tama County Sheriff; and Mike Galloway, Employer's Attorney; participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time 911 dispatcher for Iowa State Association of Counties from October 15, 1997 to July 10, 2013. She was discharged for failing to consistently follow the employer's practices and procedures.

The claimant received several warnings prior to March 30, 2012, at which time she received a verbal warning for an inappropriate racial comment after she described a native of India as a "towel head" when trying to differentiate the man in question from the Native Americans who lived in the area. On April 17, 2012, she received a written warning for propping her feet up on the communications desk, which was considered a safety issue after another employee fell while in that position. On April 23, 2012, she received a written warning for arriving 15 minutes late. On May 16, 2012, she received a written warning after waiting 11 minutes to notify of an adverse weather warning and then sent out incomplete information during her second page. On August 2, 2012, she received a written warning for misuse of the Iowa System (teletype) after she looked up her husband's name. The incident occurred in April 2012 but the employer did not become aware of the situation until a later date at which time it initiated an investigation that

also found five other employees had misused the Iowa System as well and they also received written warnings. On August 23, 2012, she received a written warning, two-week suspension and final notice after she failed to dispatch responders/agencies to a burglary in progress call July 25, 2012. The original call came in at 6:40 a.m. and was not dispatched until 10:30 a.m. because the claimant wanted to give it to the officer working on the string of burglaries. On April 23, 2013, the claimant received a final written warning and was told she was down to her last chance because she sent the wrong first responders to the scene of a fatal accident April 18, 2013. It was a very close call as to who should be notified to respond between Tama and Toledo and others have made the same mistake as it was very difficult to determine which town's first responders were closer in some situations.

On July 9, 2013, at 6:47 a.m. a mother called 911 to report her three and one-half week old baby was having difficulty breathing. The claimant did not answer the call by stating, "911. What is the location of your emergency?" (Employer's Exhibit One). That resulted in the ambulance being dispatched to the wrong location as the mother had recently moved and her address on the 911 system had not been changed. Consequently, the ambulance went to the wrong location. The mother called back nine minutes later and stated she was going to take her baby to the hospital herself and added that she did not understand why it was taking the ambulance so long when she only lived about two blocks away from the station. When the claimant's supervisor, Ryan Currans, arrived, she told him what happened and stated she paged an ambulance to the wrong location. Later that day, Mr. Currans, who no longer works for the employer, received a written complaint from the Dysart Ambulance Service about the situation. The employer then investigated the incident further, listened to the call and determined the claimant failed to properly dispatch the ambulance. If the employer had not received a written complaint from the Dysart Ambulance Service, the claimant's actions most likely would have resulted in a verbal warning but because of the written complaint the employer conducted an investigation into the matter and terminated the claimant's employment effective July 10, 2013 (Employer's Exhibit Three).

REASONING AND CONCLUSIONS OF LAW:

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

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.

While the claimant may have been singled out for behavior that others were allowed to get away with, she was an experienced 911 dispatcher and as such she knew or should have known what was required and what was expected of her. Some infractions, like having her feet propped on her desk and a remark with unintentional racial overtones, seem somewhat petty and lend credence to the claimant's belief she was being singled out by Mr. Currans, other infractions were quite serious in nature and required precision because the calls were very important.

The claimant clearly failed to dispatch officers to a burglary in progress, waiting nearly four hours to send the officer who was handling the case, and that is unacceptable. The officers should have been dispatched immediately in that case on August 23, 2012. That decision showed a lack of good judgment that is troubling. The employer initially wrote that incident up as a termination but after meeting with the claimant and her union representative it was changed to a final written warning and two-week suspension.

The claimant's job often involved life and death and ambulance calls are crucial. While dispatching the wrong first responders to an accident with a fatality April 18, 2013, was a very close call between notifying Tama or Toledo and one that effectively could have gone either way as many dispatchers would have done exactly as the claimant did due to the fact that it can be a matter of feet when outside a town regarding which town's first responders to send. Consequently, that issue was clearly an unintentional mistake and it appears the claimant should have been counseled and given further training on that situation rather than given a written warning.

The final incident, however, could have had deadly consequences as the claimant failed to ascertain the caller's correct address. Because the caller had moved and the system had not updated her address, the fact that the 911 system did not have her current address could have resulted in tragedy for the caller's three and one-half week old baby. As it was, the claimant failed to properly answer the phone, and even if the dispatchers each had different ways of answering 911 calls, it is obviously crucial to obtain the location of the emergency the party is calling about and to do it early in the call.

The employer's conduct throughout the time period discussed in the appeal hearing was also lacking. The claimant had numerous written warnings without being terminated and the employer did not appear to follow its own progressive disciplinary action policy. The claimant had answered the phone the same way, without the required, "911. What is the location of your emergency," without ever being told, coached or warned that she was not answering correctly, even when she answered in that manner in front of supervisors and other dispatchers alike. Additionally, without written complaints from outside agencies the claimant would still be an employee; the employer did not take steps to terminate the claimant's employment unless it received an outside complaint which would elevate a situation, including the final one, from a verbal or written warning to termination. Letting an outside agency dictate the disciplinary action to be taken by the employer, especially if when left to its own devices the employer would have taken much less severe action, is a slipshod way of running a department and is not fair to employees. The employer should also hold all employees to the same high standards, rather than a select few.

That said, however, under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. There is simply no margin of error when dealing with 911 calls and the employer could not risk another crucial error by the claimant. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, while not condoning the employer's methods of administering disciplinary action, benefits must be denied.

DECISION:

The August 21, 2013, reference 01, decision is affirmed. The 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.

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/pjs