

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CLAIMANT

APPEAL 15A-UI-05758-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER

**OC: 04/19/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 12, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 25, 2015. This case was consolidated for hearing with appeal number 15A-UI-05759-H2T. Claimant participated and along with her representative. Employer and their representative participated.

ISSUES:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant had been caring for a disabled individual around 30 years old, for at least the last ten years. She became part of the care team under a new plan beginning in 2008. As part of his care giving team she was present for the care plan meetings and signed off on those care plans. The claimant knew how the disabled individual was to be cared for and what help the person required to be kept safe. Under his care plan the disabled individual was not to be left on his own for any more than 90 minutes during any one day. The disabled individual is legally blind and is mildly intellectually disabled. The disabled individual lives in an apartment with a roommate and they share caregivers. The disabled individual's parents are the disabled individual's legal guardians.

The claimant worked her normal work shift on April 15 from 3:00 p.m. until 10:00 p.m. She had also volunteered to cover the overnight shift that night and was scheduled to work from 10:00 p.m. until roughly 7:30 a.m. when the bus would pick up the disabled individual and take the disabled individual to his job.

Between 10:00 p.m. and 10:30 p.m. when the disabled individual and the disabled individuals roommate were in bed the claimant left the apartment to go to her home, less than one mile away to let her dog out. While at her home she fell asleep and did not wake up until 8:00 a.m. the next morning. The claimant left the disabled individual unattended for approximately eight

hours in violation of the disabled individual's care plan. She knew she was not to leave the disabled individual alone for any reason for more than 90 minutes in a one-day period.

The disabled individual went to the bus stop to catch the bus to go to work. When the bus driver noticed that the disabled individual's roommate was not there, he went to the door of the apartment and pounded on it to see if he could get the disabled individual's roommate to answer the door. The bus drivers are not allowed to enter the resident's apartments. The legal guardian of the disabled individual's roommate was notified and that guardian contacted another care giver to go to the apartment immediately to see what was wrong. In the meantime the bus company sent two more different drivers over to the apartment to see if they could knock on the door to get the disabled individual's roommate to answer it. The third bus driver opened the door and saw the disabled individual's roommate walk out of a bedroom. The third bus driver took the disabled individual's roommate with him to the workplace. The disabled individual's roommate was not harmed, but the disabled individual's roommate had not been given medications, food or showered. No lunchbox was provided for the day at work.

The legal guardian of the disabled individual's roommate had tried to reach the claimant via telephone but she did not answer her telephone.

The other caregiver arrived at the apartment while speaking to the legal guardian of the disabled individual roommate on the telephone. The claimant's car was not in the parking lot and the claimant was not in the apartment.

The claimant woke up and called the legal guardian of the disabled individual's roommate at about 8:15 a.m. The claimant was crying and apologized repeatedly to the disabled individual's roommate's legal guardian. It was then that the legal guardian realized that the claimant had left the disabled individual and the disabled individual's roommate alone in their apartment all night long. The legal guardian of the disabled individual's roommate called the legal guardian of the disabled individual's and reported what had happened. She also called the case manager of the disabled individual to report what had occurred.

The same day the event occurred the legal guardians of the disabled individual determined that despite the fact that the claimant had no prior discipline for any similar behavior, her leaving the disabled individual alone without supervision for over eight hours was unacceptable and the claimant was discharged.

The employer of the disabled individual, the legal guardian of the disabled individual and the legal guardian of the disabled individual's roommate made a complaint of dependent adult abuse to the Department of Human Services. This employer did not make their decision to discharge based upon any investigation or decision by the Department of Human Services.

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 § 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).

The claimant knew she was never to leave the disabled individual alone for any period of time over 90 minutes. Her choice to leave the apartment to go home was intentional. She took no precautions to insure that she would be back within 90 minutes. She chose to leave for longer than 90 minutes to care for her dog. She jeopardized the safety of the human being she was charged with caring for and protecting by leaving the disabled individual alone for over eight hours. The disabled individual could not have helped himself if an emergency had occurred. The disabled individual need not have suffered physical harm in order to the claimant's actions to be found to be substantial job-connected misconduct. The claimant made a deliberate decision to leave the apartment for over eight hours. The claimant's actions are such a serious breach of the duty she owed to her employer, that this single occurrence alone, without any warning for similar conduct or behavior is sufficient job connected misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The May 12, 2015 (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css