

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JASMINE J BROWN
Claimant

APPEAL NO: 18A-UI-02473-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRELUDE BEHAVIORAL SERVICES
Employer

OC: 02/04/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 20, 2018, 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 March 22, 2018. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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 recovery assistant II for Prelude Behavioral Services from October 19, 2016 to January 30, 2018. She was discharged for failing to attend a mandatory Employee Assistance Program and admitting she was using methamphetamine.

The employer is a drug and alcohol treatment facility. In December 2017, the claimant was observed by surveillance camera during a “fit of rage” in the employer’s medication room. She was hitting herself in the head, hit the walls of the room and threw a trashcan. Clinical Supervisor Doris Cox referred the claimant to EAP and told her that her attendance was mandatory. The claimant went to her first appointment January 2, 2018, and was scheduled for her second appointment January 16, 2018, but was a no-call no-show because she did not have a ride. EAP called her and scheduled another appointment January 23, 2018, but the claimant missed that appointment as well because she still did not have transportation.

The claimant was a no-call/no-show January 26, 2018. She went to work January 27, 2018, and Ms. Cox asked the claimant if she was using drugs. The claimant initially said no but then went back to Ms. Cox’s office and admitted she had been using methamphetamine the last few months but had not used at work. Ms. Cox suspended the claimant while she consulted her supervisors and on January 30, 2018, the employer terminated the claimant’s employment for non-compliance with EAP attendance and the admitted use of methamphetamine.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was required to attend EAP counseling due to her admitted rage issues but failed to attend two of three sessions. When the employer questioned her about the situation and her no-call/no-show, she also admitted she had been using methamphetamine for the last few

months. Those situations are unacceptable in any workplace but especially in a drug and alcohol treatment center.

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. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The February 20, 2018, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn