

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JEAN B BRADFORD
Claimant

APPEAL NO: 18A-UI-10591-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IMAGINE THE POSSIBILITIES INC
Employer

OC: 09/16/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 15, 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 November 7, 2018. The claimant participated in the hearing with witness/former Supervisor Diana Brady. Maggie Muhlhausen, Personnel Administrator; Lisa Brinnen, Home and Community Bases Services Coordinator (HCBS); and Shara Muller, Human Resources Director; participated in the hearing on behalf of the employer.

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 direct support professional for Imagine the Possibilities, Inc. from May 19, 2017 to September 18, 2018. She was discharged for displaying a negative attitude and negative behavior toward individuals she served and staff members while at work.

The employer works with clients with mental illness or developmental or intellectual disabilities. On September 7, 2018, the employer received two reports about the claimant making inappropriate comments to staff and individuals served. One of the clients had struck the claimant recently. On September 7, 2018, the claimant called the individual “crazy ass,” said she “would never forgive her,” and “didn’t trust her as far as she could throw her.” Her comments made the individual cry and the employer considered the claimant’s actions retaliatory.

When the claimant arrived for her 12:00 p.m. shift September 7, 2018, another staff member was arriving at the house with individuals after they visited a senior center. The other staff member asked the claimant to take the individuals grocery shopping and the claimant said, “We aren’t doing anything today. I’m not doing anything by myself.” The staff member stated the individuals had not been to the grocery store since the previous Friday and the claimant said, “That’s not my problem. We are not going.” The claimant was upset because the staff member

returned with the individuals at 11:58 a.m. and had not had a chance to distribute the individuals' noon medications. The claimant voiced her displeasure and the staff member asked her how she could give the noon medications when she did not get back until 11:58 a.m. and was scheduled to leave at noon. Noon medications can be given until 1:00 p.m. The claimant looked at another staff member who was a trainee and said, "When she leaves I will train you the right way." The staff member suggested they speak to HCBS Coordinator Lisa Brinnen about the medication issue and the claimant agreed. The claimant then said her bonus had not been deposited in her account yet and she had "other shit to worry about." After the staff member left for the day, the claimant told another staff member that she would "slap the shit out of (the staff member who left for the day at noon) and referred to her as a "little bitch." Both comments were made in front of the individuals served.

The claimant did end up taking the individuals grocery shopping and while in the van she said to them it should have been done that morning instead of going to the senior center and an individual said they had a right to go to the senior center and the claimant argued with her and said they did not have a right and the individual started crying. She said she was going to tell Ms. Brinnen. The claimant stated she wished she would and stated she did not care who she told.

The employer met with the claimant September 11, 2018, and placed her on suspension. The employer had also learned the claimant failed to report an incident where an individual had a bad bruise on her foot from a walker falling on it and the employer checked for documentation as it occurred during the claimant's shift but there was none. The claimant admitted the incident occurred when she was working but she did not complete an incident report because she did not see a mark. The employer reminded her she needed to fill out an incident report regardless of whether she saw a mark. During the claimant's suspension, the employer conducted an investigation and had witnesses write statements about the incidents on September 7, 2018.

After reviewing the claimant's conduct September 7, 2018, the employer made the decision to terminate the claimant's employment and notified her by phone of its decision September 18, 2018.

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 made inappropriate comments to several staff members and individuals served September 7, 2018. Some of her negative and inflammatory comments were directed at one individual with whom the claimant had a physical confrontation previously and the employer determined the claimant's actions were retaliatory in nature. As a direct support professional the claimant knew or should have known her actions were unacceptable. The employer works with vulnerable clients and the claimant should not have engaged the individual in that manner.

The claimant was also upset about having to administer the noon medications and take the individuals to the grocery store. Both of those situations were routine tasks that are part of the claimant's job. Whether the claimant wanted to perform those tasks September 7, 2018, or not, it was inappropriate for her to take out her feelings about it on other staff members as well as the individuals served in the manner in which she did with threatening language, profanity and negativity.

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 October 15, 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