

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEREMY C EVERLINE**  
Claimant

**MAINSTREAM LIVING INC**  
Employer

**APPEAL 18A-UI-00100-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/10/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 27, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 25, 2018. Claimant participated. Employer participated through human resources manager Marcanne Lynch, team leader Angela Schoebel, and evening shift coach Nichole Boyd. Employer Exhibit 1 was admitted into evidence with no objection. Official notice was taken of the administrative record with no objection.

**ISSUE:**

Was the claimant discharged 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 part-time (plus) as a direct support professional from September 6, 2011, and was separated from employment on December 12, 2017, when he was discharged.

The employer has a policy that requires its employees to provide adequate supervision to its clients at all times. Claimant was aware of the employers policies.

Prior to discharge, claimant had multiple disciplinary warnings in 2017. On January 30, 2017, the employer placed claimant on probation (ongoing) for lack of supervision. Employer Exhibit 1. Claimant had left a site on January 24, 2017 without ensuring supervision had arrived. Employer Exhibit 1. The on call manager had instructed claimant to stay until the next staff member arrived, but he left before the next staff member arrived. Employer Exhibit 1. Claimant was warned his job was in jeopardy. Employer Exhibit 1. On October 30, 2017, claimant received a written warning for missing the employer's mandatory monthly meetings. Employer Exhibit 1. Claimant was instructed that the employer has a meeting the first Wednesday of every month and he needed to contact the employer if he was going to miss the mandatory meeting. Employer Exhibit 1. On October 31, 2017, the employer gave claimant a second written warning for lack of supervision. Employer Exhibit 1. Ms. Schoebel observed that claimant appeared to be sleeping while at work. Employer Exhibit 1. Claimant also had allowed a client

to leave the home without questioning the client's community time. Employer Exhibit 1. Claimant was warned his job was in jeopardy. Employer Exhibit 1.

The final incidents that led to discharged started on December 4, 2017. Claimant was scheduled to work at the employer's site (group home) at 52<sup>nd</sup> Street at 10:00 p.m. on December 4, 2017 until 8:00 a.m. on December 5, 2017. Employer Exhibit 1. Claimant did not report to the 52<sup>nd</sup> Street site; instead he reported to the 39<sup>th</sup> Street site at approximately 10:00 p.m. on December 4, 2017. The employer did not think that claimant wanted to work at the 52<sup>nd</sup> Street site. Claimant had previously expressed concerns working at the 52<sup>nd</sup> Street site. Claimant did not contact the employer to confirm where he was scheduled to work from December 4, 2017 to December 5, 2017. After claimant arrived at the 39<sup>th</sup> Street site, the staff person that worked the 2:00 p.m. to 10:00 p.m. shift left and claimant took over supervision of the 39<sup>th</sup> Street site. Around 10:15 p.m., Owen, the staff that was working the 2:00 p.m. to 10:00 p.m. shift at the 52<sup>nd</sup> Street site contacted claimant and asked where he was at because claimant was scheduled to work at 10:00 p.m. at the 52<sup>nd</sup> Street site. Employer Exhibit 1. Owen was scheduled to work 2:00 p.m. to 10:00 p.m. at the 52<sup>nd</sup> Street site and needed to leave. Claimant told Owen that the person (Abdullahi) who was scheduled to work at the 39<sup>th</sup> Street site could just work at 52<sup>nd</sup> Street site. Owen told claimant no, because he needed to leave. The clients at the 52<sup>nd</sup> Street site can never be left alone, but the clients at the 39<sup>th</sup> Street site can be left alone for up to two hours. Owen told claimant to take the keys for medication at the 39<sup>th</sup> Street site, put the clients at the site on alone time, and then come to 52<sup>nd</sup> Street site with the keys. Owen told claimant that when Abdullahi gets to work, Abdullahi could come to the 52<sup>nd</sup> Street site to get the keys for the 39<sup>th</sup> Street site. Claimant then took the keys and went to the 52<sup>nd</sup> Street site. Claimant testified he informed the clients at the 39<sup>th</sup> Street site he was leaving. Claimant did not call the on call manager to report that there would not be any staff at the 39<sup>th</sup> Street site. Claimant did not call the on call manager to report Abdullahi did not arrive for his shift. The on call manager has a cell phone that employees can call. Owen was just claimant's coworker; he was not claimant's supervisor. After claimant arrived at the 52<sup>nd</sup> Street site, Owen left. Abdullahi never reported for his shift at the 39<sup>th</sup> Street site. Claimant worked his entire shift at the 52<sup>nd</sup> Street site and no one from the employer called him for the 39<sup>th</sup> Street site keys. Claimant did not call the employer at any time during his shift to report that the clients were alone at the 39<sup>th</sup> Street site. When claimant's shift ended on the morning of December 5, 2017, he left the keys for the 39<sup>th</sup> Street site at the 52<sup>nd</sup> Street site. When claimant left, he left the 52<sup>nd</sup> Street site in disarray. Employer Exhibit 1. When the day shift staff (Chelsea) arrived at the 39<sup>th</sup> Street site around 8:00 a.m., the employer discovered that there had been no staff at the 39<sup>th</sup> Street site the entire night. Employer Exhibit 1. Chelsea contacted Ms. Schoebel and explained there had been no staff at the 39<sup>th</sup> Street site.

On December 5, 2017, Ms. Lynch called claimant and left him a message around 10:00 a.m. Ms. Lynch requested claimant call her back. Claimant's direct supervisor also attempted to contact claimant. Claimant did not return the employer's phone calls. The employer then contacted Owen and Abdullahi about what happened. Abdullahi was a new employee and just started training and he told the employer he was confused and did not realize he was supposed to work. Ms. Lynch testified that the employer would have discovered that Abdullahi was confused about his work schedule on December 4, 2017 if claimant had reported to the correct site (52<sup>nd</sup> Street). The employer disciplined Abdullahi for not showing up to work.

On December 6, 2017, the employer had a mandatory all-staff meeting. Claimant did not attend the meeting and did not inform the employer he was not coming.

On December 7 and 11, 2017, claimant spoke with his direct supervisor. Claimant told his direct supervisor it was not his responsibility because he had changed sites. Claimant also told

his direct supervisor it was not his responsibility that no one came to get the keys. Claimant's direct supervisor told him he was suspended pending the employer's investigation.

On December 12, 2017, the employer met with claimant and informed him he was discharged. Employer Exhibit 1. Claimant told the employer he did not think it was his responsibility and he did nothing wrong.

Claimant does not have other full- or part-time employment in the base period and has not requalified for benefits. Thus, claimant is no longer otherwise monetarily eligible for benefits after this employer's wages are excluded from the base period.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from part-time employment due to job-related misconduct, has not requalified, and is not otherwise monetarily eligible for benefits. Benefits are denied.

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).

Iowa Code section 96.5(12) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

12. *Supplemental part-time employment.* If the department finds that an individual is disqualified for benefits under subsection 1 or 2 based on the nature of the individual's separation from supplemental part-time employment, all wages paid by the supplemental part-time employer to that individual in any quarter which are chargeable following a disqualifying separation under subsection 1 or 2 shall not be considered wages credited to the individual until such time as the individual meets the conditions of requalification as provided for in this chapter, or until the period of disqualification provided for in this chapter has elapsed.

Workers who are disqualified from part-time employment based upon the reason for the separation may be eligible to receive reduced unemployment insurance benefits, provided they have sufficient wage credits from other base-period employers to remain monetarily eligible, and provided they are otherwise eligible. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016); codified on July 2, 2017, at Iowa Code § 96.5(12). In this event, the part-time employer's account will not be assessed for benefits paid to claimant and the employer's wage credits will not be considered in determining benefits for claimant until he or she has requalified by having worked in and been paid wages for insured work equal to ten times their weekly benefit amount.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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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). A warning weighs heavily toward a finding of intentional conduct. Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's rule requiring its employees to provide adequate supervision to its clients at all times is reasonable. The employer has presented substantial and credible evidence that during claimant's shift from December 4 to 5, 2017, after having accepted supervision over the clients at the 39<sup>th</sup> Street site, he left the clients at this site alone and without any supervision from approximately 10:15 p.m. on December 4, 2017 until approximately 8:00 a.m. on December 5, 2017 when he went to the 52<sup>nd</sup> Street site. Furthermore, the employer presented substantial and credible evidence that claimant did not contact the employer to inform it that the clients at the 39<sup>th</sup> Street site were without supervision despite having been warned about not providing adequate supervision. The employer presented substantial and credible evidence that claimant's conduct from December 4, 2017 through December 5, 2017 was a "deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees[.]" Iowa Admin. Code r. 871-24.32(1)a. This is disqualifying misconduct. Benefits are denied.

Inasmuch as the employer discharged claimant for misconduct, the separation is disqualifying. Furthermore, since claimant has not requalified for benefits since the separation and is not otherwise monetarily eligible according to base period wages, benefits are denied until he requalifies and is otherwise eligible for benefits.

**DECISION:**

The December 27, 2017, (reference 01), unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct, has not requalified for benefits, and is not otherwise monetarily eligible. Benefits are withheld until such time as claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs