

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA WILSON
Claimant

APPEAL NO: 13A-UI-04683-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/GLENWOOD
Employer

OC: 09/23/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 9, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 29, 2013. The claimant participated in the hearing with Attorney Michael Tulis. Doug Wise, Treatment Program Administrator; Pam Stipe, Public Service Supervisor III; Zvia McCormick, Superintendent; and Debra Campbell, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibits One and Two and Claimant's Exhibits A through E 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 residential treatment supervisor for Iowa Department of Human Services at Glenwood from March 26, 2003 to March 20, 2013. She was discharged when the employer determined she violated a return to work agreement.

On July 12, 2012, the claimant informed the employer she had a substance abuse problem and on July 13, 2012, she signed a return to work agreement (Employer's Exhibits One and Two). The claimant was required to undergo a substance abuse evaluation within five business days and did so. The substance abuse professional (SAP) recommended the claimant go through in-patient treatment and the claimant was in in-patient treatment at Manning Regional Health Care Facilities July 24 through August 24, 2012. She then attended out-patient treatment for 16 weeks which consisted of group therapy sessions three times per week and individual counseling every other week.

The claimant received a return to work without restrictions note from her counselor, dated August 24, 2012, and returned to work October 15, 2012, while still in out-patient treatment. On October 3, 2012, the employer contacted the claimant's counselor and asked her to provide a statement that the claimant could perform the essential functions of her job. The counselor

indicated she was not in a position to make that determination but could comment on the claimant's mental health and substance abuse treatment progress (Claimant's Exhibit B). The claimant's counselor provided weekly progress letters to the employer and on January 10, 2013, notified the employer the claimant had completed the treatment as recommended in her evaluation (Claimant's Exhibit C).

At the end of January 2013 the employer asked the claimant for a letter or form indicating she could perform the essential functions of her job and requesting all of the claimant's urinalysis (UA) results. The claimant stated she was done with her treatment and counseling. She believed the return to work agreement only applied while she was in treatment or aftercare. In mid-February 2013 the employer began questioning the claimant regarding whether she could perform the essential functions of her job with regard to passing medication as a supervisor one time per month and having the keys to the medication rooms. The claimant had not passed any medication since her return from treatment and while she had keys to the medication rooms she had not used those to enter the room. The claimant explained to the employer that her counselor was unable to provide that information previously and she was sure she would not be able to do so at that time. On March 7, 2013, the claimant's counselor wrote a letter to the employer indicating she provided the claimant with her UA results and that the claimant had completed her substance abuse treatment (Claimant's Exhibit E). The counselor continued, "As a therapist, I do not provide a forensic evaluation on someone's ability to have control of medication. We provide treatment and refer employer's to seek outside forensic evaluation if this specific employment information is required" (Claimant's Exhibit E).

After completing her treatment for substance abuse, the claimant rescinded her permission for the employer to receive information on her counseling sessions and progress. She did not want the employer to have information on the personal issues she was speaking to the counselor about that were unrelated to her substance abuse and the resulting treatment for that specific condition. The claimant at first told the employer she did not rescind her permission for the employer to receive her medical information but that information was contradicted by her counselor. The employer disagreed with the claimant's assessment that she did not have to continue to provide the employer her medical information. After completing its investigation by the beginning of March 2013, it terminated the claimant's employment March 20, 2013, for violating section 2.B and section 3 of the Return to Work Agreement (Employer's Exhibit One). The claimant, not realizing the employer had already made its decision to discharge her, provided the employer with a release of "Confidential, Protected Health Information" March 6, 2013 (Claimant's Exhibit D).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The employer contends the claimant violated the Return to Work Agreement by failing to obtain a full release to return to work and rescinding her permission for the employer to receive her medical information when it asked for information in February 2013.

The claimant did tell the employer her counselor could not provide it with the information it wanted with respect to her full medical release to return to work. Her counselor did write a full release for the claimant to return to work without restrictions August 24, 2012, but her counselor told her, and the employer, previously she could not determine if the claimant could perform all essential functions of her job, such as handling medications, because she was not a forensic evaluator. Despite that fact, the employer asked the claimant to provide the information again, which the claimant could not do as the counselor stated earlier.

The employer maintains the claimant was dishonest regarding rescinding her consent for the employer to receive her medical information. While that may have been the case, the claimant had completed her substance abuse treatment program, both inpatient and outpatient, but elected to continue to see her counselor about personal issues she was experiencing and did not believe the employer was entitled to that information. Neither does the administrative law

judge. The claimant should have been honest from the beginning when asked about rescinding her consent for the employer to view her medical information but she did provide a signed release, dated March 7, 2013. The employer, however, had already made its decision to terminate the claimant's employment.

The employer stated it discharged the claimant for violating the return to work agreement and because it had lost trust in the claimant. It cites section 2A and section 3 as the portions of the agreement the claimant violated. The claimant complied with section 2A requiring that she, "Signs a release of information to allow the SAP to release information to Zvia McCormick, Superintendent, Glenwood Resource Center, regarding the diagnosis, treatment, recommendations and plan, and aftercare plan requirements." The employer has not provided enough evidence to establish the claimant violated this section of the agreement. She also complied with section 3 stating, "Before returning to work, Deb Wilson agrees that as a condition of her continued employment, she must provide a full release to return to work with no restrictions." The claimant had a full release August 24, 2012. While the employer was not satisfied with that document, once the claimant's counselor stated and restated she was not a forensic evaluator, it became the employer's responsibility to find an individual who could make that assessment and direct the claimant there to determine if she could work with medications given her current state of recovery. Additionally, the employer allowed the claimant to work without the information it apparently expected from October 15, 2012 to March 20, 2013.

Finally, none of the reasons given by the employer for the claimant's termination from employment were due to current acts of misconduct. The claimant returned to work October 15, 2012. If the employer was not satisfied with her return to work note at that time it should have taken action in October 2012 rather than wait three or four months to pursue the matter. It believed she was dishonest regarding rescinding her permission for the employer to receive her medical records. The employer completed its investigation by the beginning of March 2013 but did not discharge the claimant until March 20, 2013. It waited three weeks after making its determination to notify the claimant her employment was terminated.

Under these circumstances, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The April 9, 2013, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs