IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANDREW K MOENK
Claimant

COMMUNITY CARE INC
Employer

APPEAL NO. 08A-UI-09891-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/10/08 R: 04
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 17, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 10, 2008. Claimant participated. Employer participated through Carol Wells, Scott Kelly, Lori Jahn and Vicki Schuman. Employer's Exhibit 1 was received.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if he was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired as part-time staff and worked from September 13, 2007 until July 29, 2008 when he was discharged. On or about July 22 claimant's supervisor Scott Kelly reported that Sarah Weideman, a county employed case manager, reported to him that a 19 year-old mentally incompetent client with mild mental retardation, who takes medications that would prevent him from being able to drive, and who has no driver's license told her that claimant had allowed him to drive on a gravel road. Claimant did not do this and said as much to Kelly. On the same day Kelly told claimant that because of this issue and tardy progress notes as recently as July 11, he was likely to be fired but that they would meet with Kelly's supervisor, Lori Jahn on July 28. Because of that statement claimant left a voice mail on Kelly's phone on July 25 tendering his resignation. Jahn would have fired him regardless of the voice mail message or the written resignation note on July 29 because he mistakenly believed he must do so before he could receive his final paycheck. Kelly had verbally warned claimant verbally not to cross the staff-client barrier by being a "buddy" to clients who were close to his age and not long before the separation claimant had asked to be removed from a particular housing assignment of a 21 year-old resident who wanted to drink alcohol and claimant did not want to be responsible for transporting an intoxicated client in his car. All progress notes due after July 11 were submitted in a timely manner.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(21) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Since employer intended to fire claimant on July 29 regardless of his response to the allegation of allowing the client to drive and claimant's written resignation was in response to his mistaken belief he must do so to obtain his final paycheck, his interpretation of Kelly's July 22 statement as a discharge was reasonable.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. IDHS*, 461 N.W.2d 603, 607 (Iowa App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

Since claimant had recently asked to be removed from responsibility for driving a client of drinking age in his personal vehicle, it does not seem consistent that he would allow another client without a driver's license to drive his personal vehicle. Since the only witness against claimant is a client who did not participate in the hearing, mentally incompetent and on medications that would render him unable to drive according to the employer, where employer's testimony or evidence conflicts with claimant's recollection of events, claimant's testimony shall be considered credible. An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer has not met the burden of proof to establish that claimant engaged in misconduct, benefits are allowed.

DECISION:

The October 17, 2008, reference 01, decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs