

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JULIE D JACKSON
Claimant

GREAT RIVER MEDICAL CENTER
Employer

APPEAL 17A-UI-05389-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/23/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 12, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for failure to follow instructions in the performance of her work. The parties were properly notified of the hearing. A telephone hearing was held on June 19, 2017. The claimant participated and testified. The employer participated through Human Resource Generalist Christy Ford, Home Healthcare Hospice Director Chris Oleson, and Home Health Supervisor Diane Wykert. Employer's Exhibits 1 through 5 and claimant's Exhibits A through M were received into evidence.

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 as a physical therapist from August 1, 2011, until this employment ended on April 28, 2017, when she was discharged.

In February 2017, the employer began to see some issues with claimant's work. Specifically, the employer noticed claimant was struggling to get her documentation done in a timely manner. Claimant testified she was experiencing some family issues during the time in question. Claimant received a positive 2016 performance evaluation, but issues began to come up in early 2017, when her father experienced some health issues. (Exhibit H). In order to try to resolve these issues a meeting was held with claimant and she was instructed that all of her documentation going forward must be done at the office, unless she had permission to work from home. Despite this directive, claimant continued to work from home and continued to struggle with getting her documentation done on time. Claimant's personal family issues and general obligations to her family made it difficult to find time to complete her work in a timely fashion and onsite as directed. (Exhibit 5). Claimant was issued a formal warning on March 16, 2017. (Exhibit 4). The warning specifically advised claimant that she needed to do her documenting in the office, unless approval to work at home was granted, and she needed to get her documentation submitted in a timely manner. The warning further advised that failure to

improve could result in termination. The employer suggested scheduling documenting hours, but claimant was unable to do this because she had a family to take care of.

Over the next few weeks, claimant's performance did not improve and she continued to work from home, despite being specifically advised not to. A meeting was held with claimant, Oleson, and Wykert on March 30, 2017 to discuss these issues. Wykert and Oleson both testified that claimant was extremely upset during this meeting and when she was presented with a final written warning, refused to read or sign it. (Exhibit 1). Claimant acknowledged receiving the disciplinary action on March 16, but did not recall receiving the disciplinary action on March 30. Claimant admitted there was a meeting between herself, Oleson, and Wykert and it was possible she was so upset by the meeting that she does not remember the disciplinary document being presented.

Claimant acknowledged she understood her job was in jeopardy if things did not improve. The employer continued to monitor claimant's performance over the next several weeks, but did not see any sustained improvement. Claimant continued to work at home as recently as April 18, 2017 and had late documentation as recently as April 25, 2017. It was concluded that claimant's performance was not going to improve and she was not going to follow the directive regarding working at home, so the decision was made to terminate her employment on April 28, 2017.

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:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Claimant was told by the employer that she needed to document in a timelier manner and could no longer work from home without permission. The employer has presented substantial and credible evidence that claimant continued to work from home and have issues with submitting her work in a timely manner after having been warned. Claimant received warnings on March 16 and March 30. Though it is possible claimant does not remember the March 30 warning, she testified she was advised her job was in jeopardy. Despite these warnings, claimant continued to engage in similar behavior. This is disqualifying misconduct.

DECISION:

The May 12, 2017, (reference 01) unemployment insurance 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs