

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA T NELSEN**  
Claimant

**APPEAL NO. 09A-UI-16788-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAINSTREAM LIVING INC**  
Employer

**OC: 10/11/09**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Mainstream Living, filed an appeal from a decision dated November 3, 2009, reference 01. The decision allowed benefits to the claimant, Jessica Nelsen. After due notice was issued a hearing was held by telephone conference call on December 14, 2009. The claimant participated on her own behalf. The employer participated by Director of Integrated Services Angela Wacker, Director of Human Resources Marcanne Lynch and Team Leader Rebecca Bingham. Exhibit One admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Jessica Nelsen was employed by Mainstream Living from December 3, 2007 until October 16, 2009 as a full-time client advocate. She was aware that documentation of visits to, and actions taken with, the clientele was an essential part of her job duties. These activities were to be documented on her time sheets as well as the outcome tracking sheets. This documentation is essential for several reasons. More than one advocate may work with a specific client and everyone needs to know what has been done with and for each client. In addition, the case files are audited and tracked by an outside source. Any failure of documentation could lead to a negative report to the funding agencies.

During the course of her employment Ms. Nelsen had usually kept her documentation up to date as required but in May 2009 she began to fall behind. She was helping to care for her grandmother who was ill and had taken a second, part-time job to help her family with finances. She did not request FMLA during her grandmother's illness.

Her supervisor, Rebecca Bingham, discussed this with her during weekly meetings and counseling was recommended for her when she stated she was having "personal problems" at home. She did not do this. No improvement was seen and a formal written warning was issued on July 6, 2009. A second written warning with a 60-day probation was issued on July 22,

2009. A final written warning with an additional 60-day probation was issued on September 28, 2009.

Ms. Nelsen's performance did not improve, and her documentation was still behind. This caused some problems for the employer when an audit was done of one of Ms. Nelsen's cases and important documentation was not in the file. She had access to the office at night and on weekends to catch up with her paperwork, and was allowed to bring her daughter into the office if she had no child care, but she still failed to submit the documentation in a timely manner.

On October 8, 2009, she assured her supervisor she would have the documentation up to date by October 12, but did not do so. The employer took the matter under advisement and notified the claimant on October 14, 2009, she was discharged.

Jessica Nelsen has received unemployment benefits since filing a claim with an effective date of October 11, 2009.

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

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 claimant had been advised her job was in jeopardy as a result of her failure to submit the required essential documentation. Failure to submit the documents jeopardized the care and health of the clients as well as the funding for the employer. The claimant was capable of doing

the job as required as her past performance indicated. Whatever personal problems she may have encountered were discussed only briefly with the employer and counseling was recommended, which step the claimant did not take.

Ms. Nelsen's personal problems are unfortunate but she never made a direct appeal to the employer for specific help in dealing with the consequences to her professional duties. As a result she failed to perform the essential functions of her job. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of November 3, 2009, reference 01, is reversed. Jessica Nelsen is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs