

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBIN L WASHINGTON
Claimant

APPEAL NO. 14A-UI-07353-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

INSIGHT PARTNERSHIP GROUP LLC
Employer

OC: 01/05/14
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated July 10, 2014, reference 05, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 8, 2014. Employer participated by Chailey Bennett. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibits A through C were admitted into evidence.

ISSUES:

Whether claimant was discharged for misconduct.

Whether claimant was overpaid benefits.

Whether claimant should repay benefits or employer should be charged after determination of employer's participation or lack thereof in fact finding.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Employer discharged claimant on May 21, 2014 because claimant failed to attend a mandatory training and attempted to convince a client to go to an alternate provider of services.

Employer provides care to mentally ill and mentally challenged clients. Claimant provided in home care for those clients. A mentally ill client of employer told employer that claimant attempted to convince him to go to another service provider. Employer provided no direct confirmation of this information.

In December 2013 claimant received a written warning for improperly administering medications to clients. Claimant was told to attend a medication training on May 20, 2014 that claimant did not attend. This meeting was said to be mandatory.

REASONING AND CONCLUSIONS OF LAW:

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.

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 Admin. Code r. 871-24.32(4), (8) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Dep't of Job Serv., 425 N.W.2d 679 (Iowa Ct. App. 1988). The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning missing a medication training meeting and speaking to a client about switching to a different service provider. Claimant was not warned concerning this policy. Claimant's warning was months old and concerned the administering of medications, not attendance or talking to client's about service providers.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant was not warned about missing the meeting and employer provided no other confirming information other than the mentally ill client's statement that he was told by claimant to look for another service provider. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

As the court is affirming the fact-finder decision, regarding the payment of unemployment benefits to claimant, the issues of overpayment and repayment of benefits are moot.

DECISION:

The decision of the representative dated July 10, 2014, reference 05, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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