

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE L GUERDET**  
Claimant

**APPEAL NO. 11A-UI-11594-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OPPORTUNITY VILLAGE**  
Employer

**OC:07/31/11  
Claimant: Appellant (2)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated August 22, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 27, 2011. Claimant participated. Employer participated by Cindy Westendorf, Human Resources Manager, and Tracy Mattson, Supervisor. The record consists of the testimony of Cindy Westendorf; the testimony of Tracy Mattson; the testimony of Michelle Guerdet; and Employer's Exhibits 1-2.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a non-profit agency that provides social services to individuals with developmental disabilities; brain injuries; and chronic mental illness. The claimant was hired on September 6, 2005. Her last day of work was August 1, 2011. She was terminated on August 1, 2011. At the time of her termination, the claimant was an area supervisor.

There is no specific incident that led to the claimant's termination. The claimant had been placed on probation on May 17, 2011, because she was not fulfilling all of the duties that had been assigned to her. The claimant's job required preparation of paperwork, which included progress notes; life plans; employee evaluations; and reports on scheduled work tasks. The claimant had longstanding problems with this paperwork being late or not being done.

When the claimant was placed on probation on May 17, 2011, she was given a list of expectations with which she was to comply. On July 29, 2011, the employer made the decision that the claimant had not met those expectations. She was terminated on August 1, 2011.

**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.

871 IAC 24.32(8) provides:

(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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes unsatisfactory job performance unless the employer shows wanton carelessness on the employee's part. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current

act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to establish misconduct.

The issue in this case is whether the claimant was terminated for a current act of misconduct. The administrative law judge asked the employer several times to identify the incident that led to the decision to terminate the claimant. The response each time that this question was asked was that there was no specific incident that led to the claimant's termination. Rather the claimant's termination was based on a collective decision by the employer that the claimant's job performance was unsatisfactory and that she did not meet the expectations that had been agreed to in a meeting on May 17, 2011, when she was placed on probation.

The testimony from the employer did show that the claimant was not performing her job in a satisfactory manner. She either failed to complete a task or did not finish it in a timely manner. She needed constant reminders. A reasonable inference from the testimony of both Ms. Mattson and the claimant is that the claimant did not have good time management skills. The claimant's failure to budget her time and do her paperwork appears to be a longstanding problem. The claimant felt that she did not have enough time to do her work. The employer may well have made a reasonable business decision to terminate the claimant's employment.

In order to disqualify the claimant from receiving unemployment insurance benefits, however, the employer was required to show that she was terminated for a current act of misconduct. The employer did not provide any evidence of when the tasks that were either not performed or not performed in a timely manner occurred. Even if the claimant's unsatisfactory job performance constituted misconduct, i.e., wanton carelessness, the employer still did not show when that happened and what specifically brought about the final decision to terminate the claimant. Absent proof of a current act of misconduct, the claimant cannot be disqualified from receiving unemployment insurance benefits. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated August 22, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vl/css