

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABBY K GERVAIS
Claimant

APPEAL NO: 12A-UI-00068-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE EASTER SEAL SOCIETY OF IA INC
Employer

OC: 12/04/11
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 30, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Sara Hardy, a human resource generalist, appeared on the employer's behalf.

The claimant used a cell phone to participate in the hearing. After the claimant's cell phone dropped the conference call two times, the claimant was told that if her cell phone dropped the call again, it was her responsibility to contact the Appeals Section to participate in the hearing. The claimant's cell phone dropped the call for a third time while the claimant was testifying. The claimant did not contact the Appeals Section again to participate in the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2011 as the full-time wellness coordinator. When the claimant had her 90-day evaluations she satisfactorily completed her job duties. Part of her job required her to document services into the employer's data base within 72 hours of providing services.

After the claimant's 90-day evaluation, her workload did not increase but she started having problems documenting the services she provided within 72 hours. After talking to the claimant about documenting her services on the employer's data base, the employer gave her a written warning on September 20 for failing to follow the employer's documentation policy. On October 25, the claimant received a final written warning for again failing to timely document services she provided. After the claimant received this warning, she understood her job was in jeopardy. The employer implemented the documentation policy because they are not paid if services are not timely documented.

Services the claimant provided the week of November 21 had not been documented in the employer's data base by November 30. The claimant typically typed up her documentation at her home in a Word document and then transferred this information to the employer's data base. The claimant did not start documenting services she provided the week of November 21 until November 28 when she was home. The claimant went out of town for Thanksgiving.

The morning of November 28, the claimant sent her supervisor an email indicating she was working on her documentation at home. The claimant worked on the documentation before she was scheduled to work at 9 a.m. on November 28. The employer previously talked to the claimant and warned her that she needed permission to work from home.

After the employer learned the claimant had not documented services she had provided during the week of November 21 by November 30 and worked from home on November 28 without receiving prior permission to do so, the employer discharged her repeated failure to complete an essential part of her job – timely documentation. The employer discharged the claimant on December 6, 2011.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant performed satisfactory work and followed the employer's documentation policy when the employer gave her a 90-day evaluation. Shortly afterwards, the employer started counseling and then gave the claimant written warnings for failing to timely document the services she provided. Even though the claimant understood her job was in jeopardy after she received the October final written warning, she still failed to timely document the services she provide into the employer's data base.

The week of November 21, the claimant left town knowing she had not documented services she had provided that week. The claimant's argument that she documented her services on a Word document when she was at home may be true, but she was required to input her documentation into the employer's data base within 72 hours. The claimant's excuse that she could not do this from her home because she did not have good Internet service does not excuse her repeated failure to follow the employer's policy.

The claimant knew or should have known that if she did not timely submit documentation for services she provided, the employer would discharge her. Even though the claimant was busy, it was her responsibility to keep her documentation current. Since the claimant knew she was required to input her documentation into the employer's data base and she did not have a good Internet connection at her home, she should have found time or other ways to get her documentation inputted into the employer's data base and did not. The claimant's repeated

failure to document services she provided within 72 hours constitutes work-connected misconduct. As of December 4, 2011, the claimant is not qualified to receive benefits.

The issue of overpayment or waiver of overpayment of any benefits the claimant may have received since December 4, 2011, will be remanded to the Claims Section to determine.

DECISION:

The representative's December 30, 2011 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 4, 2011. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of benefits is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css