

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRETT J BIERMANN
Claimant

FAMILIES FIRST COUNSELING SERVICES
Employer

APPEAL 19A-UI-08459-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/06/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 25, 2019 (reference 01) unemployment insurance decision that found the claimant was not eligible for unemployment insurance benefits based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on November 20, 2019. The claimant, Brett J. Biermann, participated personally. The employer, Families First Counseling Services, did not participate.

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 full-time as a family care coordinator. He began his employment July 1, 2011 and was discharged on October 8, 2019. Claimant provided behavior health intervention services and family safety risk permanency services to clients.

On October 1, 2019, he was notified that he was being placed on leave regarding a billing error and he was discharged on October 8, 2019. Claimant was responsible for creating his billing on an Excel document. He was required to delete the bills in his Excel document after each month and issue new bills using this software. He forgot to delete the previous month's bills and issued new, incorrect bills when he completed his billing. His supervisor and the billing department were responsible for reviewing his billing. Claimant did not intentionally issue incorrect billing statements. Claimant had no previous discipline during the course of his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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).

Because claimant was discharged from employment, the burden of proof falls to the employer to establish that claimant was discharged for job-related 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

There was no credible evidence presented that the claimant's actions were a deliberate act or omission which constituted a material breach of his duties and obligations as an employee, or that these actions rose to the level of carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Alternatively, a claimant's poor work performance does not disqualify him from receiving benefits. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not

volitional. *Huntoon*, 275 N.W.2d at 448 (Iowa 1979). Because the employer failed to establish a current act of job-related misconduct, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 25, 2019 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn