

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL SHORT
Claimant

APPEAL NO: 13A-UI-02407-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC
Employer

OC: 01/13/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Michael Short (claimant) appealed an unemployment insurance decision dated February 7, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Community Care, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2013. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Sid Bolton, Interim Director of Human Resources and Tina McQuiston, Manager of Home and Community Based Services. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: Community Care, Inc. offers programs and services to individuals with developmental and/or intellectual disabilities, mental illness and brain injury. The claimant was employed as a full-time direct support professional from June 22, 2005 through January 8, 2013 when he was discharged for insubordination and threats. He worked in a residential care facility with three male clients and one of those clients is unable to be left alone. On January 7, 2013, the employer received a report that the claimant had left the client alone while he took another client to the grocery store. Supervisor Brooke and Manager Tina met with the claimant on January 8, 2013 and advised him he was being placed on administrative leave so the incident could be investigated by both the employer and the Iowa Department of Human Services (DHS). The claimant and the employer are mandatory reporters and the claimant was aware of the procedural steps to be followed when there is a claim of dependent adult abuse.

The claimant became angry and said, "I don't give a damn." He pounded his fist on the manager's desk and said he was leaving. The claimant opened the manager's office door then shut it without leaving and yelled, "This is bullshit!" He started to bring up an incident that happened when his wife worked there over a year prior. The manager told him it was not pertinent and they were not going to discuss it. The claimant said he needed to work to support his family and began pacing back and forth in the office. He raised his fist and shook it at the supervisor and the manager as he yelled that this was wrong and they were doing this to him. The employer directed the claimant to calm down as he was insubordinate and his behavior was not acceptable. The claimant said to "kiss my ass" and stated it was freedom of speech. The manager told him he could not talk to his supervisors in that manner and he said he did not care. The claimant pointed his finger at both of them and stated he would get them back.

The manager told the claimant he was terminated and needed to leave. The claimant stated, "I know where you live and I will get you back. You better watch yourself. I am going to get you. I am coming after you!" The manager again told him to leave and he exited the manager's office and slammed the door. The claimant then hit the door and put a hole in it before leaving. The manager exited her office and followed the claimant at a safe distance to ensure he left the property. After the manager saw the claimant get in his car and leave the area, she informed the director of the incident and the interim director of human resources became involved. The employer locked the door and contacted the local police, who arrived shortly thereafter.

The police advised the employer to keep the doors locked for the next 48 hours and to obtain no contact orders. The claimant was criminally charged with simple assault and criminal mischief. He subsequently called the manager and left a voice mail apologizing for his behavior and stating that he does not really know where she lives. The voice mail was provided to the police to substantiate the fact that the claimant had threatened his supervisor and manager. The employer sent the claimant a letter directing him not to come onto the employer's property and the police also advised the claimant not to do so. The employer subsequently paid \$127.99 to fix the office door. The manager has been subpoenaed for an April 2, 2013 court hearing regarding the claimant's criminal charges.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on January 8, 2013 for insubordination and threats. An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). The claimant's insubordination and criminal threats show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 7, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css