

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEGGY J CLARK
Claimant

APPEAL NO: 17A-UI-10427-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 09/03/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 5, 2017, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 31, 2017. The claimant participated in the hearing. Gary Barrett, Human Resources Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Twelve were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time business office manager for Five Star Quality Care Inc. from February 6, 2017 to September 8, 2017. She was discharged for failing to meet the employer's performance expectations.

On July 28, 2017, the employer issued the claimant a performance improvement plan (PIP). The company goal was to have the 90 day accounts receivable under 10 percent, reduce credits to zero, with a current goal of no more than 10 percent of each account rolling over to the following month.

On August 31, 2017, the employer issued the claimant another PIP. With regard to the company goal of 90 day accounts receivable under 10 percent the claimant was "getting there" but was not at acceptable standards yet. She was not meeting the goals regarding reducing credits to zero or no more than 10 percent of each account rolling over to the following month.

The employer asserts the claimant was not trying or focused because she did not meet the goals. The claimant worked through lunch, did not take her breaks and worked as much overtime as she was allowed but found the tasks extremely time consuming. She was

performing the job to the best of her ability. On September 8, 2017, the employer met with the claimant again and notified her it was terminating her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant performed the job to the best of her ability but did not have experience with Medicare billing. While the employer trained the claimant in Medicare billing it could not train the claimant in advance of most specific situations but had to wait for the situation to occur and train the claimant at that time because there were so many different challenges that arise in Medicare billing. The claimant made every effort to improve her performance to meet the employer's expectations and did show some improvement between the first and second PIP but did not show enough progress to satisfy the employer.

Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 5, 2017, reference 03, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn