

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHY D SEARCY
Claimant

APPEAL NO. 12A-UI-06576-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONCERNED INC
Employer

OC: 05/06/12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Concerned, Inc., filed an appeal from a decision dated May 30, 2012, reference 01. The decision allowed benefits to the claimant, Cathy Searcy. After due notice was issued a hearing was held by telephone conference call on June 27, 2012. The claimant participated on her own behalf. The employer participated by Site Coordinator Mindy Gordon, Administrative Manager Tricia Pearson and Hourly Coordinator Nikki Farrell. Exhibit One was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Cathy Searcy was employed by Concerned, Inc., from March 28, 2011 until May 3, 2012 as a full-time SCL (supported community living) counselor. Her job duties entailed working in the homes of the clients who needed help in living outside a facility. This program is funded by state Medicaid money and the law has rigorous documentation requirements in order for the funding to be continued.

Documentation must be done throughout the counselor's shift, noting the time of each note along with "a.m." or "p.m." next to the time. The counselor must sign and also print their name on the report. Among the top items which must be documented are the client's "goals" and what the counselor did to help the clients meet these goals.

Starting in September 2011, SCL Site Coordinator Mindy Gordon, had counseled Ms. Searcy on the fact she was committing many errors and omission in her documentation. This is of great concern to the employer because if an audit is done by the state, and the documentation is not up to the required standards, the employer would have to refund any Medicaid money received for that day's work with the client.

In addition to the counseling by Ms. Gordon, the claimant's immediate house supervisors would monthly audit the files and then give the claimant those files of hers which needed correction. This happened regularly and the problems were always the same, lack of signed and printed names, lack of "a.m." and "p.m." and lack of documentation on the client's goals.

On February 16, 2012, Ms. Gordon issued a documented verbal warning to the claimant about her poor documentation and the other matters as well. She was given a certain amount of time to improve these delinquencies or she would be fired. Another audit was done and it was found her error rate had actually increased about three times since her highest rating back in September 2011. She was discharged by Ms. Gordon on May 3, 2012.

Cathy Searcy has received unemployment benefits since filing a claim with an effective date of May 6, 2012.

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.

The claimant was discharged for failure to perform the essential functions of her job by documenting her shifts with the clients. Ms. Searcy maintains she had never been told there were any problems with her documentation and she thought she was doing a good job. The

administrative law judge cannot accept this testimony because it is substantially lacking in credibility.

Ms. Searcy stated Ms. Gordon had never specifically mentioned the failure to document client goals in her verbal warning of February 16, 2012. But the documentation of the warning, which the claimant signed, stated quite plainly this was a substantial problem. Ms. Searcy could not explain why she thought this had not been mentioned except that she “was not listening” to Ms. Gordon.

She also felt her supervisors had not given her any indication there were problems with the files but did admit to having a stack of files given to her every month to correct, and it was always the same problems. There is no possible way a reasonable person could believe she was doing her job well under these circumstances.

The things Ms. Searcy was not doing did not require any special skills or technical knowledge. She was merely to remember to sign and print her name and put “a.m.” and “p.m.” after time notations. She was fully aware of the latter but decided on her own that she did not need to specify this because the work sheets were already labeled for each shift. But she had been told she had to do it anyway, but refused.

In addition, the claimant sometimes failed to mention anything about the client’s goals and could not provide any explanation for not doing this. Nor could she provide an explanation for failing to ask for more training and the judge can only assume she did not care about learning to do her job satisfactorily or merely lacked the necessary discipline to follow the correct procedures.

The record establishes the claimant was discharged for willfully refusing to perform her job duties as required. Failure to work to the best of one’s ability is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer’s account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual’s separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of May 30, 2012, reference 01, is reversed. Cathy Searcy is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs