

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AAUTUMN M CROSS

Claimant

APPEAL 19A-UI-01300-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SEQUEL YOUTH SERVICES OF
WOODWARD**

Employer

OC: 01/20/19

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the February 7, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 1, 2019. Claimant did not participate. Employer participated through Human Resource Director Marcia Dodds, Human Resource Assistant Jess Kuhlman, and Program Director Lorenzo White. Employer's Exhibit 1 was received into evidence.

ISSUES:

Did the claimant engage in disqualifying work-related misconduct?
Has the claimant been overpaid benefits?
Should benefits be repaid by claimant due to the employer's participation in the fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on September 10, 2018. Claimant last worked as a full-time youth counselor. Claimant was separated from employment on January 7, 2019, when she was discharged.

On December 28, 2018 the employer received a call from a local medical center, who was attempting to confirm that an injury claimant was seen for was work-related in order to properly bill the injury. The employer had no knowledge of claimant being injured in the workplace. Further investigation found claimant had gone to see a doctor after suffering an injury. The doctor asked how the injury occurred. Claimant did not want to disclose the source of the injury for personal reasons, so she told the doctor it happened while a work. Claimant explained all of this to the employer. Claimant did not make a first report of injury, nor did she take an

affirmative action to file a worker's compensation claim. White testified it did not appear as though claimant was aware the doctor's office would reach out to the employer for purposes of billing the injury as a work injury. Claimant was subsequently discharged for falsifying a workers' compensation claim.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 20, 2019, but has not filed for or received any benefits to date. The employer participated in a fact finding interview regarding the separation on February 5, 2019. The fact finder determined claimant qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The claimant was discharged for falsifying a workers' compensation claim. Claimant, however, never filed a workers' compensation claim, or even a first report of injury. Claimant did tell her doctor, during a medical appointment which she had every reason to believe was confidential, that she sustained an injury while at work. This statement was not true. However, the evidence indicates claimant did not do this for the purposes of obtaining workers' compensation benefits, but because she did not want to reveal the source of the injury for personal reasons. There is no indication that the claimant had any idea making such a statement would lead the doctor's office to attempt to bill the appointment as a workers' compensation injury as she did not take any deliberate or knowing steps to have it billed as such. The employer has not shown claimant engaged in any work-related misconduct. Inasmuch as employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning, benefits are allowed. As benefits are allowed, the issues of overpayment and participation are moot.

DECISION:

The February 7, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. Benefits withheld based upon this separation shall be paid to claimant. The issues of overpayment and participation are moot.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs