

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STACY L KRUG
Claimant

APPEAL NO. 17A-UI-07250-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRK WILLIAMS INC
Employer

OC: 06/18/17
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 12, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 2, 2017. Claimant participated personally and with witnesses Tiffany Shelton and Sierra Woodall. Employer participated through Lori Bryant and Melinda Haley. Employer's Exhibits 1-7 were admitted.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 15, 2017. Employer discharged claimant on June 15, 2017 because claimant had called employer and stated that she would be working from home on June 2, 2016. Employer found out that claimant had cancelled a meeting with a client, and then texted a coworker referring to her activities as having a "pool day." Employer believed that claimant had shirked her duties with regards to meeting with a client and had been dishonest to employer about her activities during the day when claimant stated that she was working on schedules and service plans.

Employer allows its employment specialists to work from home as long as they are completing their work. On June 2, 2017 claimant was working from home. Claimant stated that she was working on scheduling and service plans. Employer stated that a person who worked under claimant had actually done the scheduling arrangements and claimant hadn't submitted any service plans on June 2, 2017. This showed that claimant had been dishonest about what she was doing, and her dishonesty created a situation where employer could no longer employ a person they no longer trusted.

Claimant stated that she had been working on the date in question. She went into the office early in the day, and then went to a scheduled meeting that had been cancelled. Claimant admitted that she did cancel a meeting with a client mainly for her convenience, but stated that

she'd attempted to call the client multiple times in advance of the hearing to reschedule, but the client didn't answer the phone and didn't have voice mail set up. Claimant then sent a text to the client. At the set time for the hearing, the client, a functioning disabled person, called employer to state that claimant didn't make the hearing. Later claimant was able to get in touch with the client and reset the hearing.

Employer argued that since claimant's assistant had done the scheduling, and claimant hadn't submitted any service plans on the date in question, that claimant wasn't working. Claimant had the assistant testify that she'd spoken with claimant on at least five occasions on June 2, 2017 regarding work issues and scheduling. Claimant also said that she was working on service plans on that date, although they weren't submitted then. She stated that there were multiple new clients that she'd been preparing service plans for on June 2, 2017. Claimant went on to say that when one of her specialists had called in sick that claimant pulled to the side of the road – she was driving to Iowa City – to figure out a substitute worker. Claimant commented that on June 2, 2017 she was doing work for employer until after 7:00 pm.

REASONING AND CONCLUSIONS OF LAW:

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).

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. 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. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning dishonest statements regarding work performance. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because employer didn't prove misconduct. Through claimant's and her witnesses' testimony, they effectively answered employer's questions as to whether claimant had been actually working on the day in question. Employer's policy allowing working from home does necessarily include flexibility as to where a claimant might be when doing their work. As employer did not show that claimant couldn't reschedule a meeting with a client, employer did not prove claimant wasn't working on the day in question. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated July 12, 2017, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs