

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

VICOTRIA L MILLIKAN
Claimant

NEWBURY MANAGEMENT CO
Employer

APPEAL 15A-UI-01380-H2
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/04/15
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the January 23, 2015 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. An in person hearing was held on March 10, 2015 in Des Moines, Iowa. Claimant participated along with her husband Shannon Millikan. Employer participated through Sandra Sechler, Property Manager.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a resident manager beginning on April 2, 2014 through January 8, 2015 when she was discharged. The claimant was promoted to a full-time resident manager position on September 22, 2014. There is a tremendous amount of paperwork required of the position. Some of the completed paperwork if not done in a timely manner could lead to the employer not receiving payment from HUD, which funds 70 percent of each residents rent payment. When the claimant began the position, it was already behind; as much was left to be done that had not been completed since the prior manager left. The claimant was given minimal training by Ms. Sechler. Ms. Sechler admitted in an email to the claimant on November 17 that she had been given very little training. The claimant sought help from others but was still trying to learn the position when she was discharged on January 8 for unsatisfactory work performance.

The claimant and Ms. Sechler met on December 9 and Ms. Sechler discussed with the claimant some performance improvements she needed to make. There were numerous areas regarding paperwork that the claimant struggled to timely complete. The claimant was sent an email confirming their discussion but there was no notice given to the claimant that if she did not meet expectations by January 8 she would be discharged. At least one of the annual recertification

forms that had not been completed was due on November 4 and was not mentioned by Ms. Sechler to the claimant in the December 9 email. With all of the new information given to the claimant, the claimant simply did not know that the recertification had to be completed by the deadline or the employer could lose some funding. The employer did not lose any funding as a result of any late completed work.

The claimant was performing to the best of her ability but still had much to learn on how to accomplish the tasks correctly. She took over a job for which she was given little training. The job was back logged when she started and she was given only a little over three months to work prior to being discharged.

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 § 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.

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).

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. IDJS*, 386 N.W.2d 552 (Iowa App. 1986). Since the evidence established that in three months the claimant never had a sustained period of time during which she performed all job duties to employer's satisfaction and inasmuch as she did attempt to perform the job to the best of her ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The January 23, 2015 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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