

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW B CRAM
Claimant

LIFE CONNECTION LLC
Employer

APPEAL 17A-UI-01934-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/01/17
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the February 3, 2017, (reference 01) unemployment insurance decision that allowed benefits on a combined wage claim with Wisconsin based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 14, 2017. Claimant participated. Employer participated through human resources representative Jeannie Ferneau and regional supervisor Allissa Hennings.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?
Is the employer's account chargeable for unemployment insurance benefits paid?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time (10 billable hours) juvenile behavioral health intervention service provider for Life Connection LLC, a Medicaid provider, from March 2015, through June 24, 2016. His last day of work was June 22, 2016. He failed to complete the 30-day work performance improvement plan. He was expected to bill a minimum of ten hours per week and meet the 90 percent unit-utilization standard to meet with the client at least 90 percent of the time assigned for the week by Medicaid. In the June 2015, 90-day review, claimant was notified he needed improvement in both areas or he may face termination from employment. He continued not to meet the expectations through May 2016, that coincided with annual review. Claimant told the employer he "cannot" meet the expectations. Claimant was also in graduate school during the employment and had evening classes two days per week. At hire he was informed the job would require him to be available after school hours and on weekends. Providers are responsible for setting their own schedule within these parameters and for obtaining client referrals for service. Clients live within a 45-mile range of Guttenberg, Iowa. Claimant's clients advised Hennings that scheduling appointments with claimant was a barrier to receiving services because his schedule was not flexible when they were available for appointments. Although clients sometimes cancel appointments, the standard average covers a four-week span so appointments may be rescheduled and still count towards the standard.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

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).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant failed to

meet reasonable work standards after having been warned. Even though there were some circumstances outside of claimant's control, his repeated failure to meet the 90-percent standard is considered at least partially deliberate because of his failure to make himself reasonably available when juvenile clients were able to schedule appointments including evenings and weekends. Claimant's repeated failure to adequately perform these job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a.

DECISION:

The February 3, 2017, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

NOTE: Claimant has worked seasonally at Cabela's since his separation from Life Connection and has not established requalification such as paystubs or a 2016 W-2 form showing Cabela's gross wages. Those may be presented to an unemployment insurance benefits office in Wisconsin or Iowa for evaluation of requalification.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs