

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE KELLER
Claimant

APPEAL NO. 12A-UI-09745-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

OC: 07/08/12
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Julie Keller, filed an appeal from a decision dated August 7, 2012, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 6, 2012. The claimant participated on her own behalf and was represented by Elizabeth Flansburg. The employer, Broadlawns, participated by Director of Human Resources Julie Kilgore and Director of Programs Kaye Smoldt. Rick Barrett observed the proceedings but did not participate. Exhibits A, B, One and Two were 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:

Julie Keller was employed by Broadlawns from October 4, 2004 until June 26, 2012 as a full-time service worker. She was to call or visit clients on a regular basis to determine their progress and needs. These contacts were to be documented in U of I contact reports and tracking notes. The information regarding the number of contacts to which clients would be submitted to Polk County Health Services and the employer would be reimbursed.

On June 19, 2012, the sister of client Cynthia G contacted a former case worker to say Ms. G had died June 14, 2012, in Florida. Ms. Keller was informed of this, since she had worked with Ms. G in the past. Director of Programs Kaye Smoldt was told and then reviewed Ms. G's file to close it out and make sure everything had been billed correctly. In that review, she discovered Ms. Keller had documented visiting with Ms. G "face to face" on February 28, May 13 and June 6, 2012.

Ms. Smoldt contacted Ms. G's sister on June 19, 2012, and she confirmed the former client had moved to Florida in January 2012. The program director ran a printout of the U of I Contact Report on Ms. G done by the claimant and it showed the face-to-face visit on June 6, 2012, as having been made. The next day, when she checked the report again, the visit of June 6, 2012, had been removed from the computer system. The modification was done with under Ms. Keller's access information.

Further review of Ms. Keller's documentation showed another client, Timothy B., had been contacted by phone on March 13 and April 19, 2012, with a face-to-face visit May 11, 2012. Ms. Smoldt contacted the nursing home where Mr. B resided and was told he had died February 24, 2012.

Ms. Keller called in sick on June 20, 2012, but exchanged text messages with Ms. Smoldt when the employer requested a meeting to discuss the documentation inconsistencies. The claimant said she had a doctor's appointment June 21, 2012, but would contact the employer after that. She did not do so but had her daughter bring in an FML report from her doctor, which only mentioned her medical diagnosis and treatment. There was no information to the effect of her current condition. Ms. Keller was in the hospital from June 21 and was released June 24, 2012, but made no attempt to contact the employer to discuss the documentation problem once she was released.

After Ms. Keller was out of contact for a week, she was discharged by letter on June 26, 2012, by Ms. Smoldt.

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 administrative law judge found the claimant's testimony to be confusing, contradictory and inconsistent. She admitted to making the hand-written notes on her tracking sheets for March, April and May 2012, for Mr. B but asserted she merely made a "mistake" when she put down on each of those monthly reports she had had either by phone or face to face contact with Mr. B. This is not possible for any contact to have been made, given the fact he had died in February. She then attempted to assert someone else had made the reports that were incorrect but could not explain how someone else had written the reports she admitted to filling out herself.

She denied changing the U of I Contact Report to remove her documented face-to-face meeting with Ms. G on June 6, 2012, but did not explain who would or could have done so and why. Likewise, at least one of these contacts for each of the clients was required to be made face-to-face in order to fulfill the requirements of the yearly report. There is no way she could have made any type of face-to-face contact with these individuals given their death dates and out-of-state location at the time of the yearly report. Therefore, the assertion she merely put down the wrong type of contact is not credible, because no contact of any type could have been made. In addition, while one mistake is not unusual, three months' worth of mistakes for Mr. B and the same number of months' mistakes for Ms. G is very unusual. So unusual, in fact, as to not be truthful.

It is evident the claimant was not doing her job but merely putting down contacts that did not occur. This resulted in the employer inadvertently submitting fraudulent billing to the government, which could have resulted in loss of license, repayment of the monies already paid or other sanctions.

Much was made by the claimant of her medical condition. That is irrelevant to the entire issue of why she was fired. The employer only wanted to discuss these matters with her before making any decision. Ms. Keller's dedicated refusal to contact the employer is the issue. A phone call to discuss the matter would have been acceptable. While Ms. Keller may have been ill and in the hospital, there is no evidence she could not simply pick up a phone and call Ms. Smoldt to give an update on her condition and make arrangements for a meeting at some future date.

The record fully establishes the claimant was discharged for falsification of the documentation on the clients. This 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.

DECISION:

The representative's decision of August 7, 2012, reference 02, is affirmed. Julie Keller is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw