

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY L SNOWGREN
Claimant

APPEAL NO: 13A-UI-03779-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN BAPTIST HOMES OF MIDWEST
Employer

OC: 02/24/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
Section 96.6-2 – Timeliness

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 19, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 3, 2013, and continued on May 9, 2013. The claimant participated in the hearing. Amy Spangler, Community Administrator; Candice Owens, Assistant Program Director; and Tracy Murphy, Program Director participated in the hearing on behalf of the employer. Department's Exhibit D-1 and Employer's Exhibits One through Twenty Seven were admitted into evidence.

ISSUES:

The issues are whether the claimant's appeal was timely and whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on March 19, 2013. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by Friday, March 29, 2013. The appeal was not filed until April 1, 2013, which is after the date noticed on the disqualification decision. The claimant hand delivered her appeal letter to the Workforce office at 450 East Grand March 29, 2013, rather than the office at 1000 East Grand, where the Appeals Section is located. The 450 East Grand office forwarded the claimant's appeal letter to the Appeals Section April 1, 2013. Under these circumstances, the administrative law judge concludes the claimant's appeal is timely.

The claimant was employed as a full-time consumer support staff member for American Baptist Homes of Midwest from January 26, 2007 to February 25, 2013. She was discharged for

falsifying a mileage chart and insubordination after going through the employer's progressive disciplinary action steps.

On February 11, 2013, the employer held a meeting regarding a 19 year old consumer's health. The consumer has Type 1 Diabetes and had been diagnosed with high blood pressure that week (Employer's Exhibit Nine). All of the staff members who work at that house were present at the meeting. They discussed food and nutrition for that consumer, the consumer's desire to work on healthy eating, including going to Subway once a month with her roommates on a Saturday night, and what to purchase at the grocery store to help create healthy menus for the consumers (Employer's Exhibit Nine). The staff also discussed what foods the visiting nurse stated the consumer needed to stay away from including "fried foods, food high in sugar and sodium, and pork" (Employer's Exhibit Nine).

On February 21, 2013, the claimant took consumers to the home of another employee in violation of the employer's policy. The policy is in place to protect consumers' confidentiality and safety. Additionally, one of the consumers had a guardian who must be notified and give permission for that consumer to go on an outing. The employer had talked to the claimant about the same behavior in the past (date unknown) and told her during orientation that its policies and procedures prohibit an employee to provide services in the personal home of any employee (Employer's Exhibit Ten).

Also on February 21, 2013, the claimant called Program Director Tracy Murphy to ask if she could take the consumer discussed on February 11, 2013, with Type 1 Diabetes and high blood pressure and another consumer to a restaurant called Pho888 (Employer's Exhibit Nine). The claimant and the women in the house had shoveled the areas of the driveway missed by the snow removal crew and then proceeded to shovel the driveway of an elderly couple who lived next door on that date. The couple gave the claimant \$15.00 and told her to take the women to lunch. The claimant is required to turn in any wages earned by the women and document the same. Ms. Murphy reminded the claimant that the women had already been out to a restaurant that month and needed to save their money for personal care items, such as shampoo and body wash (Employer's Exhibit Nine). Ms. Murphy told the claimant the restaurant was not a "healthy choice" and was too expensive (Employer's Exhibit Nine). She informed the claimant not to mention the restaurant to the women and the claimant asked again about taking the consumers to Pho888 and Ms. Murphy texted back "too much salt, sorry" and the claimant replied, "Okay" (Employer's Exhibit Nine). On February 22, 2013, the overnight staff sent Ms. Murphy a text message stating the claimant took the women to Pho888 and brought home sandwiches that they put in the refrigerator for dinner that evening (Employer's Exhibit Nine). Ms. Murphy asked the overnight staff if the women's money was used to purchase the sandwiches and they said it was not (Employer's Exhibit Nine). One of the women told the overnight staff the claimant used the employer's van to drive to Pho888 but that trip was not listed on the required mileage sheet for the day but it did state the claimant used the van to stop by her bank (Employer's Exhibit Nine). The employer requires all trips be documented on the mileage sheet (Employer's Exhibit 13).

On February 25, 2013, Ms. Murphy met with the claimant to discuss the above-stated issues. She questioned the claimant about taking the women to another employee's home, falsifying the mileage sheet and insubordination in taking the women to Pho888 after specifically being denied permission to do so (Employer's Exhibit 11). She then terminated the claimant's employment for those reasons (Employer's Exhibit 11).

On November 1, 2012, Ms. Murphy met with the claimant to discuss her failure to complete contact notes from September 2012 and gave her a form with all the missing contact note dates

(Employer's Exhibit Three). The contact notes are used by the employer to bill the state by documenting services provided. If the employer is audited and the contact notes are not done it can face fines or could lose its funding altogether. Ms. Murphy asked the claimant if she was done with the September 2012 contact notes and the claimant indicated she was not. Ms. Murphy asked if there were any "barriers that do not allow her to get her contact notes in on time and (the claimant) stated that she can be distracted easily by the other members and this is why she has issues" (Employer's Exhibit Three). Ms. Murphy made some suggestions to the claimant of how she might be able to complete the required contact notes and while the claimant did not appear overly receptive to her suggestions she did agree to try to have the notes done by Monday, November 5, 2012 (Employer's Exhibit Three). The employer considered that conversation a verbal counseling. On November 5, 2012, the claimant received a written warning because she failed to have all of the September 2012 contact notes done by November 5, 2012, as she previously agreed to do (Employer's Exhibit Four). The employer has also discovered November 2, 2012, there were notes missing from October 2012 as well and the claimant was directed to complete those by November 5, 2012, too. The employer's expectations on the written warning stated, "Contact notes are important documentation about what goals and supports you assist the members with while on your shift. Crest Policy is you're not to leave your shift without first writing the contact notes for members that you provide services to" (Employer's Exhibit Four). The warning also stated, "If further performance issues occur, this can/may result up to and including termination from Crest Services" (Employer's Exhibit Four). The claimant signed the warning November 5, 2012, without making any comments in the space provided for statements (Employer's Exhibit Four).

On January 29, 2013, the claimant received a second written warning for calling in at 6:52 a.m. for her 8:00 a.m. shift to leave a voice mail message stating she would not be in that day (Employer's Exhibit Eight). The employer's policy requires that employees speak to their supervisor personally at least two hours before the start of their shifts, rather than leaving a voice mail or text message (Employer's Exhibit Eight). The warning again stated that any further incidents "can/may" result in termination (Employer's Exhibit Eight).

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:

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.

On February 21, 2013, the claimant took consumers, including one who requires the permission of her guardian to go on outings, to another staff member's house. Regardless of the reason, the claimant's actions violated the employer's policy.

The claimant attended a meeting February 11, 2013, where the health of the consumer with Type 1 diabetes and high blood pressure was discussed and plans were put in place to assist that consumer with healthy eating. On February 21, 2013, the claimant took the consumers to Pho888 despite asking Ms. Murphy if she could do so and explicitly being told she could not. The claimant's decision to take the consumers to the restaurant after having been told not to was blatant insubordination whereby the claimant substituted her judgment for that of her superior, Program Director Tracy Murphy, and the visiting weekly nurse. The fact that the claimant wrote on the mileage sheet that they stopped at her bank but failed to include that they also went to the restaurant demonstrates the claimant knew what she was doing was wrong and would not be condoned by the employer. Additionally, the claimant improperly handled the consumers' money, received for shoveling the neighbor's driveway, by failing to document the wages and using the money for the consumers' purchases at the restaurant rather than directing them to use it for personal care items as instructed by Ms. Murphy. That decision was also insubordinate in nature.

The claimant had received a verbal counseling and two written warnings prior to the events of February 21 and 22, 2013. The level of insubordination exhibited by the claimant February 21 and 22, 2013, rises to the level of disqualifying job misconduct as that term is defined by Iowa law. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The March 19, 2013, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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