

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUNE M MCGHGHY
Claimant

THE EASTER SEAL SOCIETY OF IA INC
Employer

APPEAL 19A-UI-09563-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/27/19
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The Easter Seal Society of Iowa (employer) appealed a representative's November 27, 2019, decision (reference 01) that concluded June McGhghy (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 2, 2020. The claimant participated personally. The employer participated by Maggie Cox, Director of Office Management. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 17, 2013, as a full-time direct support professional/on-call specialist. The claimant signed for receipt of the employer's handbook on June 17, 2013. The claimant also signed for receipt of the Case Record Reading and Quality Assessment Policy. It stated, "Team members are required to enter documentations immediately following services but no later than seventy-two hours".

On March 1, 2016, the employer issued the claimant a written warning for not completing documentation in a timely manner. The employer notified the claimant that further infractions could result in termination from employment.

In approximately 2017, the employer changed the policy and sent the claimant an e-mail notifying her of the change. The Case Record Reading and Quality Assessment Policy now stated, "Team members are required to enter documentations immediately following services but no later than twenty-four hours".

The claimant was documenting as quickly as possible. The employer scheduled the claimant for sixty to ninety hours per week and did not allow time for documentation. Frequently, the

claimant worked thirty-five to forty day stretches without any days off. Three of the seven days she would work sixteen hour shifts.

On October 7, 2019, the employer issued the claimant a written warning for not completing documentation in a timely manner. The employer notified the claimant that further infractions could result in termination from employment. The employer gave the claimant until October 11, 2019, to complete her notes. The claimant explained there was not enough time to document but she would do the best she could. The employer provided no accommodations to allow her time to document.

The claimant documented as many cases as she could. On the morning of October 15, 2019, she was still working to finish notes. On October 15, 2019, the employer terminated the claimant for not documenting her case notes in a timely manner.

The claimant filed for unemployment insurance benefits with an effective date of October 27, 2019. The employer participated personally at the fact finding interview on November 19, 2019, by Maggie Cox.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of overwork and staffing issues by the employer. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's November 27, 2019, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn