

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YVONNE E WEBB
Claimant

APPEAL NO. 12A-UI-04564-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEHAVIORAL TECHNOLOGIES CORP
Employer

OC: 03/25/12
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 18, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on May 14, 2012. Claimant participated. Employer participated through Administrator of Services Melissa Smith. Employer's Exhibit 1 was admitted to the record.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a developmental specialist from March 10, 2009 and was separated from employment on March 30, 2012. She was fired for having left a client unattended on a van for over ten minutes on March 28. Claimant was assigned to two clients that day—Ernie, who is severely and profoundly intellectually disabled and cannot be left alone for more than a minute at a time, and Bob. Claimant, supervisor Ed (who was driving), and staff members Chris and Jenny returned from a group workshop site with eight clients: Kenny, Ernie, Bob, Greg, Mary Ann, Rhonda, Susie, and Sue. Ed pulled into the bottom of the driveway and stopped so claimant and Chris, with clients Kenny and Greg, could get out and retrieve the garbage cans and return them to the fenced storage area by the house. Everyone else, including Jennie and Ernie, stayed in the van and claimant asked Jenny to take care of Ernie since he was not capable of assisting with the garbage cans. Jenny agreed. At 2:50 p.m. the four of them went to get the trash cans and put them in the fenced storage area while Ed and the rest of the staff and clients in the van drove up to the house and went inside. Claimant and Chris took the two clients inside the house. By that time, Ed and Jenny were in the house with the rest of the clients. Claimant did not notice Ernie was not in the house and assumed Jenny had brought him inside with her. Jenny and claimant did not check with each other about Ernie's status. She finished her client log books and passed the books to Stephanie, who arrived for second shift, and left at 3 p.m. as scheduled. Within minutes after claimant left, Chris found Ernie

buckled in the van. No one else was disciplined or fired because of the situation. All other staff and the supervisor are still employed but were not called to participate.

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.

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 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, 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. IDJS*, 391 N.W.2d 731 (Iowa App. 1986).

Findings must be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Iowa Code § 17A.14(1). Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was merely an isolated incident of poor judgment by her failure to communicate with Jenny about Ernie's whereabouts and there was no deliberation. Even though the conduct, standing alone, might be considered misconduct, since claimant was fired and Jenny did not receive even a verbal reprimand for her failure to communicate with claimant or take care of Ernie as she had agreed, the disparate application of the policy cannot support a disqualification from benefits. Benefits are allowed.

DECISION:

The April 18, 2012 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw