

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BLAKE MARTIN
Claimant

APPEAL NO: 09A-UI-08152-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TAILORED LIVING INC
Employer

OC: 10-12-08
Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 26, 2009, reference 05, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 22, 2009. The claimant participated in the hearing. Carla Cole, Human Resources Director, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is 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: The claimant was employed as part-time structured community living (SCL) worker for Tailored Living from March 11, 2009 to April 28, 2009. The claimant started as an outreach worker but had trouble with his documentation in that position and after the employer reviewed the situation for approximately 24 to 48 hours it offered him a job as a SCL worker around April 19, 2009, so he would be in-house and the employer could help him with his documentation. The claimant was told to report to Supervisor Ryan Cizmadia April 22, 2009, and Mr. Cizmadia directed him to train with Brian, the daytime lead person who does all of the training, but instead the claimant chose to train with co-worker Mary Ellen, whose probationary period had been extended because she regressed rather than progressed during her training and first probationary period. On April 22, 2009, Supervisor Matt Brown told the claimant to report for work at 7:00 a.m. because there was a gap in coverage as another employee had to leave early but the claimant ignored that instruction and showed up at 9:00 a.m. The claimant trained with Supervisor/Human Resources Director Carla Cole for 18 hours and they covered documentation and also met in person on four separate occasions. On April 23, 2009, the claimant was told to fax his documentation to Ms. Cole at the conclusion of every shift so she could make notes and fax it back so it would be available for the claimant to review the following morning but he did not follow through with that directive. The claimant's documentation routinely failed to show the timelines of the day for the consumers, the goals worked on, what part of the treatment plan

was worked on and other items that were required. He also routinely failed to show the IRTs which stands for intervention by the staff; response from the consumers and the treatment goal addressed by the interaction and response. The staff member needs to complete all three sections for correct documentation to occur. The documentation was extremely important because it shows the State what is being done and determines the payments the facility receives. Ms. Cole felt the claimant was ignoring her instructions, as well as those of other supervisors, because there was no change in his documentation even after he had been corrected and consequently the employer terminated his employment April 28, 2009.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant testified he did not understand what he was supposed to do, or that he did the documentation correctly, or that he did not remember many of the incidents the employer testified to and consequently his testimony was not

particularly credible. The employer made notes about his lack of improvement of his documentation and could recite dates and events clearly making her testimony more credible. The claimant asserted he was not trained despite the fact that Ms. Cole worked with him for 18 hours, asked him to fax his daily documentation to her so she could review it and return it with her comments for him to read the next day and when he was set up to work with the trainer he chose to work with a co-worker who had not performed well herself. The employer did attempt to train the claimant but it does not appear that he put much effort into learning how to document correctly by following the employer's training or other instructions. 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.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The May 26, 2009, reference 05, 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 claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css