

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA K GREINER
Claimant

CARING HANDS & MORE LLC
Employer

APPEAL 17A-UI-06643-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/04/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 23, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for failure to follow instructions in the performance of her job. The parties were properly notified of the hearing. A telephone hearing was held on July 18, 2017. The claimant participated and testified. The employer participated through Administrative Director Megan McCannon and Service Coordinator Diane Kofron.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a caregiver from September 11, 2014, until this employment ended on June 8, 2017, when she was discharged.

On June 2, 2017, claimant took four clients to an event in downtown Iowa City. Each client has an individualized service plan (ISP). When they arrived at the event two of the clients exited the car and two remained in the car, as they were not interested in the event. Claimant remained in the car as well. One of the clients who exited the car had an ISP that instructed she is not to have alone time in the community. Kofron testified this directive was in place because the client has an anxiety disorder, as well as other mental health disorders, and, being new to the area, did not yet feel safe or comfortable being in the community alone. This incident came to the employer's attention when the client reported it to Kofron. According to Kofron the client was very upset, felt like she was not safe, and indicated she and the other client had been left alone for a significant period of time. Both McCannon and Kofron testified the employer's policies require clients' ISPs to be followed at all times and that staff are aware of and trained on this. McCannon further testified that when a client is in the community employees are expected to both accompany and provide support to that individual.

Claimant acknowledged she was aware a client's ISP is to be followed at all times. Claimant testified the two clients who exited her car were out in the community for approximately five minutes before they decided they wanted to leave. Claimant further testified both clients were

within her line of vision the entire time, which she felt met the supervision standard, though she admitted that if a client had needed her immediate support, she would not have been able to provide this from her car. Claimant also testified she believed this client had been allowed 15 minutes of alone time in the community. Claimant admitted this was not based on any update to the client's ISP, but on information she received from the client. Kofron testified employees are notified when an ISP changes and it would not be appropriate for an employee to take a client's word for it that an ISP had changed without notification of such from the employer. Kofron further testified no changes had been made to this particular client's plan and she is still not allowed alone time in the community as of the date of the hearing. Claimant had received a warning for similar conduct on March 29, 2017, when she remained in the car at the grocery store while two clients did their shopping. Claimant was specifically advised at the time that she was required to accompany clients while out in the community and that her continued employment was conditional on meeting this requirement. Claimant was subsequently discharged as a result of the June 2 incident.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Here, claimant contends she met the employer's expectations that she would accompany clients while in the community because she could see the client from her car. The employer testified this is not acceptable as she is not available to adequately supervisor and support a client from her car. Claimant's interpretation of what it means to accompany a client in the community is not reasonable. The employer provided credible testimony that the client in question was very upset and felt unsafe, indicating she was not properly supported. Claimant admitted that, while she did not believe the client was in a situation where she needed support, she would not have been able to provide support from her car. Claimant had been warned once before about providing proper supervisor and was specifically advised that she needed to accompany clients in the community. Workers in the dependent care profession, reasonably have a higher standard of care required in the performance of their job duties. The employer has a duty to ensure its clients are safe and secure. Claimant jeopardized the client's safety and security by allowing them to go out into the community without proper supervision. The employer has presented substantial and credible evidence that claimant engaged in similar behavior on June 2 even after having been warned on March 29 that failure to improve would jeopardize her employment. Despite this warning, claimant continued to engage in similar behavior. This is disqualifying misconduct.

DECISION:

The June 23, 2017, (reference 01) unemployment insurance 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs