

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA L TAPP
Claimant

APPEAL NO: 18R-UI-10390-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUNCAN HEIGHTS INC
Employer

OC: 02/25/18
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 12, 2018, (reference 03) unemployment insurance decision that denied benefits. A first hearing was scheduled and conducted with administrative law judge Duane Golden on September 24, 2018. The claimant appeared and the employer did not appear. See Appeal 18A-UI-09477-DG-T. The employer successfully requested reopening to the Employment Appeal Board (EAB) who remanded the matter for a new hearing.

The parties were properly notified about the hearing. A telephone hearing was held on November 30, 2018. The claimant participated personally. The employer participated through Philip L. Garland, attorney at law. Employer witnesses included Heidi Hansen, Monica Abbas, and Sharon Stromer.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibits 1, 2, 4-16 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer operates group homes for adults with mental illness. The claimant was employed full-time as a community support staff and was separated from employment on August 16, 2018, when she was discharged.

When the claimant was hired on May 2, 2018, she was trained on employer rules and procedures (Employer Exhibit 4, 5, 8). These included rules about confidentiality/HIPAA/privacy, appropriate dress attire in the workplace, children not being

permitted in the group homes without administrator approval, and restricting cell phone usage on duty. The claimant was also provided training on the employer's documentation system, Full Circle, which charted consumers' activities, but also served as a tool for Medicaid billing, and was inspected by the State of Iowa for compliance.

The employer had a host of issues arise with the claimant early in her employment, including the claimant bringing her granddaughter to the group home, as well as her daughter. The claimant charted bringing her granddaughter into the premises to meet the consumers, one of whom was in her private bedroom (Employer Exhibit 2). In addition, Ms. Hansen had verbally warned the claimant about having family at the group home after personally observing the claimant's daughter lying on the couch there, watching TV. The employer explained to the claimant the home was the personal residence for its consumers, and that could create safety/liability issues to the employer having unauthorized people there.

The employer also had multiple incidents of the claimant not adhering to the dress code. The employer did not require a uniform, but expected its employees to wear modest shorts and tops in the workplace. The employer had received complaints from consumers based upon her attire. Ms. Hansen verbally warned the claimant on July 19, 2018 (Employer Exhibit 6) and Ms. Stroman did again on August 14, 2018, after the claimant was observed wearing spaghetti strapped tank tops and "short-shorts" that did not cover all of her rear end.

The employer also believed the claimant was not being attentive to her consumers based upon social media posts (Employer Exhibit 7) and lack of "intervention" activities within her documentation. Part of the claimant's job duties involved teaching life skills to the consumers and the employer received payment for services which included such activities. In addition, when the employer reviewed the claimant's documentation in Full Circle, it was full of spelling errors and grammatical issues. (Employer Exhibits 2, 6, 9).

On August 8, 2018, Ms. Hansen completed the claimant's 90 day probationary period review (Employer Exhibit 14) which included several documented areas of needed improvement. Ms. Hansen also coordinated for Ms. Stroman to come retrain the claimant on August 14, 2018. When Ms. Stroman met with the claimant on August 14, 2018, she reviewed documentation expectations, including use of the spellcheck button on Full Circle. She also told the claimant she could not continue to wear "short-shorts."

On August 16, 2018, Ms. Hansen and Ms. Stroman went to the group home where the claimant worked. They observed the claimant with her feet up on the couch, and her daughter lying on the couch (Employer Exhibit 11). The claimant was not performing "interventions" or interacting with consumers. A pizza box was nearby. The claimant was again wearing "short shorts" (Employer Exhibit 12). She was subsequently discharged by the employer (Employer Exhibit 1).

Since the claimant's separation on August 16, 2018, she has received \$5,061.72 in unemployment insurance benefits.

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 law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified

until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). In this case, the claimant was discharged for repeatedly violating employer policies, including caring for consumers, wearing inappropriate clothing, and having family members present at the group home. Based on the evidence presented, the administrative law judge is not persuaded the claimant's inability prevented her from successfully completing her job duties, but rather, choices she deliberately made, even after being warned.

On August 14, 2018, the claimant was issued retraining regarding intervention and documentation with the consumers for which she supervised in their group home. She was told at that time again that she could not wear short-shorts. The claimant responded on August 16, 2018 by wearing short-shorts, and having her daughter visit the home, as evidenced by the employer seeing both of them lying on the couches in the group home upon arrival. The claimant was not tending to consumers and had again violated the employer's rules about family

members being on the premises, as well as chose not to adhere to the dress code. This is not indicative of the claimant doing the job to the best of her ability after just being warned. The administrative law judge is persuaded the claimant knew or should have known her conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct. Benefits are denied.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since the initial decision disqualifying the claimant has been affirmed, the claimant was overpaid \$5,061.72 in unemployment insurance benefits. These benefits must be repaid.

DECISION:

The September 12, 2018, (reference 03) 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. The claimant has been overpaid \$5,061.72, which must be repaid.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn