

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAVANNAH R STEVENSON

Claimant

APPEAL NO. 11A-UI-00935-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEHAVIORAL TECHNOLOGIES CORP

Employer

OC: 12-26-10

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 18, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 1, 2011, in Des Moines, Iowa. The claimant did participate along with her witness, Sara Tootill. The employer did participate through David Bradish, president; Melissa Smith, administrator of services; and Virginia Bradish, director, and was represented by Bridget R. Penick, attorney at law. Employer's Exhibits One through Eight were entered and received into the record. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a developmental specialist, full-time, beginning June 2, 2009, through December 27, 2010, when she was discharged.

When the claimant was hired she was put on notice that she have health insurance or that she buy into the employer's group health insurance program. The company handbook, a copy of which was given to the claimant, indicated that she was required to participate in the employer's health insurance program, at least for herself. The employer is required by their health insurance carrier (Wellmark Blue Cross/Blue Shield) to have most if not all of their employees to participate in the health insurance program. Initially, the claimant provided evidence to the employer that she had title XIX coverage for herself and thus was not required to purchase the group health insurance benefits offered by the employer. The claimant lost her title XIX insurance in July 2010. In December 2010, the employer learned that the claimant no longer had title XIX insurance and she was told at that time that she would be required to purchase the group health insurance offered by the employer. The cost of the plan was \$126.36 per month. The claimant was told in early December that she had until December 27, 2010, to sign up for the employer's group insurance or to obtain health insurance coverage on her own. The claimant obtained "Iowa Cares" at no cost to her and provided proof of that to the employer, who

passed on the information to Wellmark Blue Cross/Blue Shield. Wellmark determined that the Iowa Cares program did not meet their requirement that she possess "creditable coverage." The Iowa Cares program the claimant participates in is not health insurance. It is a program run by Broadlawns and the University of Iowa Hospitals to provide care for low income individuals. When the claimant was told that the Iowa Cares program would not meet the requirements, she told the employer she would not agree to participate in their group program. The claimant was suspended due to her failure to either participate in the employer's group health insurance or to purchase qualifying health insurance on her own. The claimant's employment has since ended.

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 § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant knew that she was required to either provide proof of insurance she obtained on her own, or to enroll in the employer's plan. She had provided proof of acceptable insurance in the past in the form of title XIX. She also searched for other cheaper programs to purchase on her own. The claimant knew that she had to comply with the employer's requirements. The Iowa Cares program is not health insurance that is acceptable under the Wellmark plan. In fact, the Iowa Cares program is

not health insurance at all. The claimant was notified of that and given ample time to sign up for the employer's plan or to purchase qualifying insurance on her own. She refused to do so. Under the circumstances, the employer's requirement is reasonable. Without requiring that all the employees participate, they could not offer health insurance benefits to any of their employees. The claimant knew of the requirement when she was hired and had complied with it in the past. The claimant's refusal to sign up for and pay for the group plan or to obtain qualifying health insurance on her own is sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The January 18, 2011 (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw