

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRYSTAL A KIROFF
Claimant

LUTHERAN SERVICES IN IOWA INC
Employer

APPEAL 16A-UI-11190-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/18/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 11, 2016 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on October 31, 2016. The claimant, Crystal A. Kiroff, participated personally and through witness Melissa Thomas. The employer, Lutheran Services in Iowa Inc., participated through witness Michelle Cook. Claimant's Exhibits A and B were admitted. Employer's Exhibits 1 – 8 were admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Case Coordinator. Claimant was employed from December 15, 2015 until September 22, 2016 when she was discharged from employment. Claimant's job duties involved meeting with families as required by the Iowa Department of Human Services ("DHS") to provide a variety of parenting skills, budgeting skills, and other behavioral skills to families. Her position included documentation of all interactions, providing monthly progress reports and contact notes. She was also responsible for providing transportation for families to various appointments and providing supervision during family visits. Her direct supervisor was Michelle Cook.

The employer has a written employee handbook, ethics policies and work rules. See Exhibits 3 and 4. Claimant was able to access the employee handbook via employer's online system. Claimant was also subject to the Health Information Portability and Accountability Act ("HIPAA") requiring her to keep client information confidential. See Exhibit 3.

On or about August 5, 2016 Ms. Cook was notified that claimant accepted a cat from one of the employer's clients. Claimant had been assisting another case coordinator, Melissa Thomas,

when she was notified that the client no longer wanted the cat. Claimant's actions were in violation of the employer's conflict of interest policy which prohibited employees from accepting gifts from clients, donors, or stakeholders of the organization for personal use. See Exhibit 5. When Ms. Cook learned about this matter she instructed claimant to return the cat to the client as soon as possible and claimant was issued a written discipline regarding the incident. See Exhibit 2.

Claimant did not return the cat. The client did not want the cat back. Claimant did not discuss this matter further with Ms. Cook but instead continued to keep the cat at her personal residence.

On September 15, 2016 it came to Ms. Cook's attention that claimant had not returned the cat when another co-worker reported to Ms. Cook that claimant had sent her an email documenting a telephone conversation claimant had with the client's significant other regarding the return of the cat. The client's significant other, who resided in Georgia, had learned that the claimant had possession of the cat and was trying to get in contact with her in order to have the cat returned to Georgia. Claimant was given the telephone number to contact the significant other back at. Claimant did not review the client's file to discern whether or not there was a release of information in the client's file so that she could speak to the significant other about the client.

Claimant called and spoke to the significant other and discussed with them the fact that she was not going to pay for shipping to get the cat from Iowa to Georgia. Claimant also indicated in her email to her co-worker regarding this telephone conversation that she should be reimbursed for room and board for the cat during the time it was in her possession and according to claimant's interpretation of Iowa law, the cat had been abandoned. Claimant was discharged on September 22, 2016 for her failing to follow her supervisor's instructions in returning the cat to the client and for releasing information to the significant other in Georgia without a release of information from the client to do so.

Claimant had received previous written discipline on August 1, 2016 regarding past acts which included using personal social media to contact a client; entering a foster parent's home without permission; allowing inappropriate contact between two siblings while she was supervising the visit; contacting a DHS employee via personal text message; leaving work early; failing to complete case documentation as required; and sending an email stating that she would not interact with other team members. See Exhibit 6. Claimant was put on a performance improvement plan (PIP) and was also provided with copies of the employer's conflict of interest policy at the time this plan was reviewed with her. See Exhibit 6.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Further, 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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 Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *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. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the Administrative Law Judge finds that Ms. Cook’s testimony is more credible than claimant’s testimony.

Prior to her discharge claimant had committed several violations of company policies, including the conflict of ethics policy which she was ultimately discharged for violating again. Claimant’s job duties included following these necessary and required policies that were in place. She was clearly aware of the policies as she had access to them and was provided copies of them during her PIP meeting with Ms. Cook.

Continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Claimant was clearly insubordinate when she failed to follow Ms. Cook’s reasonable instructions to return the cat. Further, claimant was deceitful when she failed to disclose to Ms. Cook that the cat had not been returned for over a month. Lastly, claimant violated the employer’s policy regarding release of information when she called and spoke to a party who she was not allowed to disclose information to.

The employer has the right to expect employees to follow its reasonable policies. There is substantial evidence in the record to support the conclusion that claimant deliberately violated these rightful expectations in this case. Accordingly, the employer has proven claimant committed job-related misconduct. As such, benefits are denied.

DECISION:

The October 11, 2016 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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