

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HOLLY R PRESTON

Claimant

**SEQUEL YOUTH SERVICES OF
WOODWARD**

Employer

APPEAL 18R-UI-02833-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/10/17

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 27, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 28, 2018. Claimant participated. Employer participated through executive director Brent Hutchings. Human resources manager Shaneice Coleman attended the hearing on behalf of the employer. Group living director Quintin Moreno registered for the hearing on behalf of the employer, but he did not attend the hearing.

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 habilitation program director from April 5, 2017, and was separated from employment on December 11, 2017, when she was discharged.

The employer has a written policy that requires employees to report critical incidents to their supervisors. Critical incidents include anything that would involve safety and security of the employer's employees or residents. Claimant was aware of this policy.

On November 29, 2017, one resident (hereinafter "Resident 1") was mad at another resident (hereinafter "Resident 2"). Resident 1 called Resident 2 a derogatory name because Resident 2 did not do the dishes. Resident 2 contacted claimant and reported what happened and that Resident 1 had hurt Resident 2's feelings. Resident 2 wanted to go to a family member's house, which claimant allowed. Claimant did not report this incident (Resident 2 leaving due to Resident 1's comments) to Mr. Hutchings. Mr. Hutchings was claimant's direct supervisor. Mr. Hutchings testified that if a resident has to leave the house it is considered a critical situation. Later Resident 2 returned to the home. Resident 1 then assaulted Resident 2 while a staff member (hereinafter "Staff Member 1") was working. Staff Member 1 was a direct care employee that provided for the direct care of the employer's residents. Staff Member 1 did not report the assault to the employer. Claimant was Staff Member 1's direct supervisor. Staff Member 1 was required to report the incident immediately. The police also responded to the

house on November 29, 2017, but Staff Member 1 did not report to the employer that the police had responded to the house.

On November 30, 2017, Resident 2 informed claimant that Resident 1 had assaulted Resident 2 on November 29, 2017 after Resident 2 returned to the house. Claimant immediately reported the incident to Mr. Hutchings. Claimant then met with Resident 2 and staff to determine what occurred on November 29, 2017. Claimant also spoke to Staff Member 1 about the incident. Staff Member 1 informed claimant that Resident 2 did tell Staff Member 1 what happened and the police did come to the house.

On December 1, 2017, Mr. Hutchings met with claimant regarding Staff Member 1. Claimant informed Mr. Hutchings she did not think Staff Member 1 should be working in the house. Claimant recommended that Staff Member 1 cease working in the house. Mr. Hutchings told claimant that the staff member should not be working in the house until further notice. Both claimant and Mr. Hutchings agreed Staff Member 1 should not work in the house anymore. Claimant was responsible for knowing who was working in the house. Also during the meeting, Mr. Hutchings discussed with claimant her lack of communication regarding critical incidents.

Later, Staff Member 1 asked claimant if she could work on December 1, 2017. Claimant told Staff Member 1 no, because the shift was already covered. Claimant did authorize Staff Member 1 to work on December 2, 2017. Claimant testified she allowed Staff Member 1 to work on December 2, 2017 to give Staff Member 1 forty hours for the week. Claimant did not receive permission from the employer to allow Staff Member 1 to work on December 2, 2017. On December 1, 2017, claimant called and left a message with the human resources director that Staff Member 1 was going to work on December 2, 2017. Staff Member 1 also worked on December 4, 2017. Claimant did not schedule Staff Member 1 to work on December 4, 2017.

On December 4, 2017, the employer discovered that claimant had allowed Staff Member 1 to work on December 2, 2017. On December 5, 2017, the employer was able to contact Staff Member 1 and informed Staff Member 1 not to work until further notice. Staff Member 1 told the employer that she had also worked on December 4, 2017. Staff Member 1 told the employer that she did not know she was not supposed to be working.

On December 5, 2017, claimant discovered that Staff Member 1 had worked on December 4, 2017. Claimant did not contact human resources about Staff Member 1 working on December 4, 2017.

On December 8, 2017, Mr. Hutchings met with claimant about allowing Staff Member 1 to work. Mr. Hutchings also reviewed the critical incident that occurred on November 29, 2017.

On December 11, 2017, Mr. Hutchings and Mr. Moreno met with claimant. The employer reviewed with claimant its issues of concern. The employer informed claimant she was discharged.

Claimant had prior written warning for lack of communication. On November 8, 2017, the employer gave claimant a written warning for lack of communication after an employee had not reported to work and claimant failed to report the incident.

REASONING AND CONCLUSIONS OF LAW:

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

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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). 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). A warning weighs heavily toward a finding of intentional conduct. Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985).

The employer has presented substantial and credible evidence that claimant had allowed Staff Member 1 to work on December 2, 2017 after having been told not to let her work anymore. Mr. Hutchings credibly testified that on December 1, 2017, during his meeting with claimant about an incident that occurred on November 29, 2017, he informed claimant that Staff Member 1 was no longer to work in the house. The employer was concerned with Staff Member 1 working in the house. Mr. Hutchings' testimony was corroborated by claimant's testimony that she and Mr. Hutchings agreed Staff Member 1 should not be working in the house. Furthermore, claimant had recommended to Mr. Hutchings that Staff Member 1 not work in the house anymore. Despite Mr. Hutchings order and claimant's recommendation that Staff Member 1 should not work in the house anymore, claimant allowed Staff Member 1 to work in the house on December 2, 2017 without seeking permission from the employer. Claimant was responsible for knowing who works in the house. Claimant's decision to allow Staff Member 1 to work on December 2, 2017 in order for Staff Member 1 to have forty hours that week, does not justify or excuse claimant's conduct of willfully ignoring her supervisor's December 1, 2017 directive not to let Staff Member 1 to work in the house anymore.

The employer presented substantial and credible evidence that claimant's conduct was a "deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees[.]" Iowa Admin. Code r. 871-24.32(1)a. This is disqualifying misconduct. Benefits are denied.

DECISION:

The December 27, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs