

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA R MCCARTHY**  
Claimant

**APPEAL NO. 11A-UI-12207-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HILLCREST FAMILY SERVICES**  
Employer

**OC: 08/14/11  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 7, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on October 11, 2011. Claimant participated and was represented by Dominic Pechota and Tom Langlas, Attorney at Law. Employer participated through Director of Residential Education John Belini, Assistant Director of Residential Education Todd Birch, and Employment Coordinator Shannon Hagensten. Employer's Exhibits 1 through 5 were admitted to the record. Claimant's Exhibits A through E were admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a salaried residential counselor from January 2006 and was separated from employment on August 12, 2011. She was paid additional funds for extra hours worked for absent coworkers in July 2011. She had 24 hours of billable time with clients which left her 16 hours to complete her paperwork. When she complained about her workload, Birch offered to reduce her extra hours and she declined. On August 11 the client told another counselor that he had not been meeting with the claimant. The employer viewed security camera footage to verify the client's report and found that on July 25, 2011 she entered false Medicaid billing information for a client (HH) indicating services had been provided in her office for 40 minutes when the client was there for 15 minutes according to the camera footage. (Employer's Exhibit 4, page 1) She also billed Medicaid for time she said she met with a client (AG) in her office between 9:30 and 10:30 a.m. on July 22, 2011 when she was at a doctor's appointment at 9:54 a.m. and did not report to work until after 10:30 a.m. (Employer's Exhibit 4, page 4, Claimant's Exhibit E) On July 12, 2011 claimant billed Medicaid for 45 minutes spent in the office with a client (AG) when surveillance camera footage showed the client was there for 16 minutes. Employer's Exhibit 4, page 3) When confronted with the notes and false billing charge, she denied doing anything wrong. Belini reviewed the entire three days' camera

footage in all facilities where sessions can occur and found no other meetings with these clients. She did not indicate she had trouble with the time reporting system Unison, for which she had training on April 14, 2009. (Employer's Exhibit 5) It is not a common practice or permissible to add separate treatment notes for one day together in one care note or billing report since Medicaid time is billed by time and unit. Effective July 1 Medicaid began paying the employer a per diem rate but still expects service minutes to be tracked along with individual and group sessions for cost reporting purposes to show that a minimal level of treatment to justify the per diem amount paid. Counselors are also expected to provide the same documentation for the family center work in a group home as they would for providing service in the office. The employer's policy calls for compliance with the False Claims Act included in the Deficit Reduction Act of 2005. It also calls for immediate termination without warning for falsification of records. She received the policy on December 2, 2009. Employer's Exhibit 3, pages 1, 5, 6, and 8) The employer warned her in writing on July 27, 2010 and suspended her for five days for false billing for three clients when the sessions did not take place. Claimant admitted the conduct and was placed on probation for 90 days on July 28, 2010. (Employer's Exhibit 1, pages 2 and 3)

#### **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.

Claimant's repeated failure to accurately bill for services performed or not performed after having been warned may not have been deliberate but is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

**DECISION:**

The September 7, 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.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/css