

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLY C MERK
Claimant

APPEAL NO. 09A-UI-09142-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 05/10/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 10, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 13, 2009. Claimant participated personally and called Rita Purcell as a witness. Employer participated by Patrick Quigley, Administrator. Exhibit 1, pages 1—10, was admitted into evidence.

ISSUE:

The issues in this matter are whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was the director of admissions. The employer fired the claimant after reviewing the admission and readmission documents of Resident "A." [Resident's A name was not provided in order to protect the resident's confidential information.] The employer indicated that three of the five documents were photocopied and a new signature was not obtained by Resident A or Resident A's Power of Attorney. According to Mr. Quigley, the Power of Attorney for Resident A only recalls signing two, not five agreements. The claimant denied making copies of the readmission agreements and not having Resident A or Resident A's Power of Attorney sign them. The claimant said the Office Manager April Hughes had access to the documents and was the staff person who may have done the improper copying of the records. Ms. Hughes had the responsibility to review the admission documents after completed by the claimant. Mr. Quigley asked Ms. Hughes if she had made those documents and she denied making the documents.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

If proven, falsifying admission records would be misconduct. The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. Findings must be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Iowa Code section 17A.14(1). Generally hearsay evidence is imprecise and conclusory. Because of the nature of the evidence produced at hearing, the employer is unable to show misconduct. The claimant's statement and employer's statement must give detailed facts as to the specific reasons 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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer did not provide the records or call the office manager to provide direct evidence of the misconduct. The employer believed the claimant improperly copied the documents but has no direct proof. The circumstantial evidence is not convincing given the fact that other staff had

access to the records and the relationship of the claimant and the office manager. The employer has alleged that the claimant made copies of recodes that were false and violated company policy and Medicaid requirements. The claimant denied under oath making such false records. The employer has the burden of proof. I cannot find based upon the evidence that the employer has proven by a preponderance of the evidence that the claimant falsified documents.

The administrative law judge holds that the evidence has not established that claimant was discharged for an act of misconduct when claimant allegedly violated the employer's policy concerning falsifying records.

DECISION:

The decision of the representative dated June 10, 2009, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs