

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA J EASTMAN

Claimant

APPEAL NO. 10A-UI-04499-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/WOODWARD

Employer

OC: 02/21/10

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 17, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 10, 2010. Claimant participated with Richard Brooks and was represented by Dorothy Dakin and Dan Tunesvik, Attorneys at Law. Employer participated through David Fox and Steve Overstreet and was represented by Beth Sheffield of Talx.

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 heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a residential treatment worker and was separated from employment on February 3, 2010. On January 2, 2010 Penny VanSchyver, who is no longer an employee, reported several hours after the incident that claimant allegedly pushed a disruptive and self-injurious client's head to the wall. Fox investigated and submitted an initial report on January 8, 2010 but presented an addendum on January 21 after VanSchyver later reported that claimant also told the client to, "fucking knock it off, and if you don't fucking knock it off, I'm going to kill you." Later in the investigation VanSchyver reported she had also observed claimant hit a client on the side of the head early in her employment but did not report it. Fox recalled that clients from that house were unable to verbalize what happened. Supervisor Abby Gregory did not observe the incident but saw blood on claimant's shirt. The client had been hitting his head against the wall and created an open wound after becoming upset that Christmas decorations were being taken down. Some blood from that wound transferred to claimant when she held her hand cupped such that it was between the client's forehead and the wall in order to offer protection. VanSchyver did not help claimant or indicate any concerns at the time. Brooks reported to VanSchyver's call for help with the client after claimant went on break. Brooks also got blood on his clothes while placing his cupped hand between the client's forehead and the wall. He never heard claimant raise her voice or

swear at clients then or at any other time. He got there before either the nurse or Cohen and Gregory arrived and relieved him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. IDHS*, 461 N.W.2d 603, 607 (Iowa App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs

potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was supported entirely by hearsay statements of a former short-term employee who admitted to coworkers she had "issues" with claimant. Employer has not credibly established that claimant acted in any inappropriate way with the client. Benefits are allowed.

DECISION:

The March 17, 2010 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The benefits withheld shall be paid to claimant.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs