

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAYNA M STIEGER
Claimant

APPEAL NO. 10A-UI-14671-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**TAPESTRY SENIOR LIVING
OF VILLAGE RIDGE**
Employer

OC: 10/11/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 14, 2010 (reference 03) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on February 16, 2011. Claimant participated and was represented by James Redig, attorney at law. Employer participated through Diana Niemeier and Lisa Walker. Employer's Exhibits 1 through 12 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 heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a marketing coordinator and was separated from employment on August 13, 2010. On August 12, potential resident KS's family complained that claimant did not give the tour correctly because she left the building before the tour was completed and went to an outside referral appointment. KS's family was a walk-in with no appointment except that they would be there sometime that day. Employer believes claimant should have cancelled the outside referral appointment and rescheduled that, but Walker was in town in part to go with claimant to the outside appointment in Iowa City scheduled for 3:30 p.m. KS's family was there on tour with claimant for 15 to 20 minutes before she told them she had another prearranged appointment. They said that was okay, since they had not set a specific time to arrive. As claimant and KS's family spoke with Niemeier outside her office, claimant advised her she was going to leave for the Iowa City appointment. She thought Niemeier was going to take over the appointment from there and left with Walker to retrieve items from her office before leaving together for Iowa City at about 3 p.m. Niemeier had warned her in writing on August 6, 2010 not to miss scheduled appointments as she had on July 20, 2010 and told her if she had an outside appointment, someone in-house could handle those. No one told her to reschedule the outside appointment on August 12. She did not miss any appointments after the August 6 warning.

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.

871 IAC 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.

Given that claimant had been warned on August 6 not to miss appointments, was told that in-house employees could take over tours if she had a scheduled appointment, and since claimant advised Niemeier while they were speaking to the KS family outside Niemeier's office that she was leaving for the scheduled August 12 appointment with Walker in Iowa City but was not told she could not leave or must reschedule and finish that tour, no final or current act of misconduct has been established. Inasmuch as employer had warned claimant about the final incident on August 6, 2010 and there were no incidents of alleged misconduct thereafter, it has not met the burden of proof to establish that claimant acted deliberately or negligently after the most recent warning. Employer has not established a current or final act of misconduct, and,

without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The October 14, 2010 (reference 03) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw