

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRISTIN N. LARSEN
Claimant

APPEAL NO: 17A-UI-06220-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEER OAKS MENTAL HEALTH
Employer

OC: 07/03/16
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 13, 2017, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 5, 2017. The claimant participated in the hearing. Kerry Curry, Director of Employee Relations, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time business development and retention manager for Deer Oaks Mental Health from July 11, 2016 to May 17, 2017. She was discharged for failing to meet the employer's expectations.

The claimant worked remotely from her home and consequently trust between the employer and the claimant was vital. The claimant was also required to travel in her position. Her responsibilities included working as part of the broader leadership team to provide support to clinical staff and contracted facilities in the Nebraska and Iowa regions. In November 2016, the claimant began tapering off her communications with the broader leadership team system. The employer noticed delays in the claimant returning phone calls and scheduling meetings, the claimant stated the delays were due to her working in the other state in her territory. With regard to delays in her Nebraska duties, the claimant stated that was due to her spending more time in Iowa. During an Iowa meeting where clinicians complained about a lack of support, communication and knowing the claimant, she indicated that was due to her being extremely busy in Nebraska. However, Nebraska was seeing a steady decline of revenue since the summer of 2016 as revenues fell from \$800.00 to \$125.00 daily. The claimant also worked Iowa which saw its longest plateau in growth, with virtually no growth since the summer of 2016, when the claimant was hired. Prior to the employer discussing these issues with the claimant in March and April 2017, the employer's attempts to identify specific developmental activities

completed by the claimant, was difficult for the employer. When questioned by the employer about her work, the claimant would state she could not recall what homes she had called, failed to document her efforts, and then said she would gather the information and send it in but failed to do so. Consequently, the employer required the claimant provide a pre-week plan and a summary at the end of each week beginning March 9, 2017. The claimant failed to provide the Friday summary report March 31, April 7, April 21, May 5, and May 12, 2017, and the reports were late April 14 and April 28, 2017. The claimant was also expected to continue to document her activities in Salesforce, software designed to document the claimant's activities with facilities within the data base. In August 2016, the claimant made 64 entries in Salesforce; in September 2016, she made 23 entries; in October 2016, she made 15 entries; in November 2016, she made two entries; in January 2017, she made three entries; in February 2017, she made one entry; in March 2017, she made one entry; and in April 2017, she made two entries. While there would typically be some fluctuation in the number of entries, there would not be such a great discrepancy like the one demonstrated by the claimant's numbers. In January 2017 the claimant was expected to meet with a clinician in Davenport but did not call or show up for the meeting and did not communicate with the employer the entire day. In March 2017, she was late to a dinner with the CEOs, CFOs, and Chief Clinical Officers. In April 2017, the claimant missed several conference calls because of personal conflicts with the meetings.

On May 2, 2017, the claimant was scheduled to go to Mason City to work with the homes to get more referrals for the area clinician. The claimant cancelled at the last minute and failed to adequately communicate and reschedule contacts to the home. The claimant rescheduled the trip for May 5, 2017, but did not do so until May 4, 2016. There were two homes the claimant was expected to visit while in Mason City but she only went to one. The employer determined that was an inefficient use of the employer's time and resources because the claimant drove three hours to only meet with one facility rather than meeting with area clinicians, providing account management at each home served, and completing drop by calls at facilities not contracted with in the region. The claimant's supervisor had instructed her to visit the homes in an effort to increase referrals for the clinician.

The claimant had a trip scheduled to the Quad Cities several weeks in advance for May 16 through May 18, 2017. The employer made many requests for an agenda for the trip but the claimant failed to provide one. The employer checked Salesforce for contacts to the local homes but did not find any. One specific request, made three times by email, involved contacting a Rock Island home prior to arriving in the area and asking for verification that contact was made and that home was on the agenda but the claimant did not visit that home when in the Quad Cities. On May 15, 2017, the claimant emailed her supervisor that the Quad Cities trip may need to be modified. Her supervisor responded that the luncheon May 16, 2017, should not be rescheduled. The claimant replied the luncheon was not going to be changed. The claimant did not inform her supervisor of any specific schedule changes and the employer assumed the claimant was going to visit the other homes in the area and keep her other appointments. Instead, the claimant only attended the luncheon and was late in arriving for that event. One specific home in the Quad Cities had been unhappy with the employer's ability to meet their needs at an organizational level. Because of past issues, the employer has made a concerted effort to fix the relationship between the claimant and the clinician at the home. The May 16, 2017 meeting was the first meeting established to build a relationship of trust with the clinical staff in the area but the claimant's tardiness to the luncheon put that relationship in jeopardy.

Another issue the employer cited was a failure by the claimant to respond to email requests regarding the psychiatry spreadsheet; the Des Moines area spreadsheet update; the Nebraska

work update for which the claimant could not provide information, could not locate information, and could not recall general ideas or any specific information pertaining to the region, several situations where the claimant did not successfully call into conference calls; failure to provide updates on regular activities, conference attendance summaries, and luncheon information; and failure to timely respond to calls from nursing homes, including incidents where nursing homes have contacted the claimant twice without a response.

When pressed the claimant testified she could have been a little more organized but denied the employer's allegations or any neglect of her job duties and contends she adequately communicated with her supervisor and clients.

After reviewing the claimant's work record and failure to communicate with clients and the employer, and following the unsuccessful trip to the Quad Cities in May 2016, the employer notified the claimant her employment was terminated May 17, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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.

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant worked from home and did some traveling as well. Because there was no physical supervision of the claimant in the workplace, the employer had to trust the claimant to perform the required functions of her job and to communicate truthfully what she was doing on the job. The employer had programs in place to monitor the claimant's performance and foster communication with the claimant but the claimant neglected to participate fully in those programs. When the employer questioned the claimant regarding why certain duties were not being fulfilled in Nebraska, for example, the claimant would state it was because she was too busy in Iowa and vice versa. Given the significant drop in revenue in Nebraska and the stagnant revenues in Iowa, the employer did not find the claimant's excuses valid.

The claimant also failed to document crucial pieces of information regarding which homes she visited and other activities she performed required by the employer in its Salesforce software program and would tell the employer she would get that information for the employer but failed to do so. Her entries in Salesforce decreased dramatically going from a high of 64 entries in August 2016, to a low of one entry in February and March 2017, respectively. As a result, the employer began requiring the claimant to provide a pre-week plan and a weekly summary at the end of the week showing her activities to her supervisor but she failed to provide the weekly summary report to her supervisor March 31, April 7, April 21, May 5 and May 12, 2017, and sent the reports in late April 14 and April 28, 2017.

In May 2017, the claimant was scheduled to visit Mason City and the Quad Cities but there were problems with both trips. She was instructed to meet with area clinicians, provide account management at each home served, and complete drop by calls at facilities that were not contracted in that region. The claimant only met with one facility while in Mason City. The claimant was scheduled to be in the Quad Cities from May 16 through May 18, 2017. On May 15, 2017, she emailed her supervisor and said the Quad City trip may need to be modified. She was specifically told she could not change the date or time of the scheduled luncheon and the claimant agreed it would not be changed but left the employer with the impression the other tasks she was to perform May 18, 2017, would be completed. However, that was not the case and the claimant only attended the luncheon. The employer made several requests for the claimant's agenda for that trip but the claimant failed to comply with the employer's instructions. The employer checked Salesforce for contacts with the local homes but none were listed. The claimant was specifically told to visit the Rock Island home while in the area in three separate emails but the claimant did not do so. There were other numerous required documentation the claimant failed to comply with as part of her job duties

The claimant acknowledges she may have had difficulty with organization occasionally but does not accept responsibility for most of the documentation and job duties that were not completed as directed and required in her position with the employer. The employer attempted to work with the employee and issued her a verbal warning March 30, 2017 and a written warning April 13, 2017. Despite those warnings, the claimant still failed to meet the requirements of her

job with the employer and knew, or should have known, her job was in jeopardy when she did not perform the essential functions of her job.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The June 13, 2017, reference 02, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn