

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CANDICE KING
Claimant

APPEAL 19A-UI-07836-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MAYOR'S YOUTH EMPOWERMENT
PROGRAM**
Employer

OC: 09/08/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On October 7, 2019, Candice King (claimant) filed an appeal from the September 30, 2019, reference 02, unemployment insurance decision that denied benefits based upon the determination Mayor's Youth Empowerment Program (employer) discharged her for failing to follow instructions in the performance of her job. The parties were properly notified about the hearing. A telephone hearing was held on October 28, 2019. The claimant participated personally. The employer participated through Kari Wilken, Chief Operating Officer. No exhibits were offered into the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was re-employed part-time as a Director Support Professional beginning on May 3, 2017, and was separated from employment on July 10, 2019, when she was discharged. The employer provides services to clients with intellectual disabilities who live in group homes. The employees are required to document what cares are provided to each client and where the care occurs so that Medicaid and other funding sources can be properly billed.

The claimant had worked one-on-one with the same client during her tenure. The employer allows clients to go to employees' homes if the employee gets permission from their supervisor and the client's guardian. As late as Father's Day of 2019, the claimant had permission to take the client to her home.

On June 30, 2019, Donna Henry, Lead Direct Support Professional, counseled the claimant about taking the client to her home. Henry informed the claimant that the client's mother, her guardian, had concerns with the client visiting the claimant's house and she no longer wanted the client to go to the claimant's home.

On July 4, the claimant was scheduled to work at 5:00 p.m. The full-time staff called the claimant to see if she was on her way to the client's home. The claimant stated she was cooking and would be at the home once she was done. The full-time staff dropped the client off at the claimant's home. The claimant did not return the client to the group home until 7:45 p.m., after she finished cooking, to give the client her 8:00 p.m. medications. The claimant documented that all the cares the client had received that day occurred in the group home. She did not document that the claimant had been at her house for approximately three hours.

The employer learned of the incident when the client reported she had been at the claimant's house to another staff member. Henry notified Kari Wilken, Chief Operating Officer, and an investigation was conducted. During the investigation, the employer discovered the falsified documentation. The employer determined the claimant deliberately disobeyed the directive that the client was not to go to her home because she did not accurately document what had occurred. As a result, the employer discharged the claimant on July 10.

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. Benefits are denied.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has an interest in providing a secure and safe environment for its clients and being able to bill for services rendered. The claimant had been warned she was not to have the client at her house as the client's mother had revoked her permission. The claimant allowed the client to be at her house and then falsified documents in an apparent attempt to hide the conduct from the employer. The claimant's conduct was a deliberate disregard of the employer's interests. Accordingly, benefits are denied.

DECISION:

The September 30, 2019, reference 02, unemployment insurance 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn