

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA J ZINTAK
Claimant

APPEAL NO. 13A-UI-09784-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HANDICAPPED DEVELOPMENT CENTER
Employer

OC: 07/14/13
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Handicapped Development Center filed a timely appeal from a representative's decision dated August 14, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 30, 2013. Claimant participated. The employer participated by Ms. Diane Hamm, Assistant Program Director and Ms. Lena Pillers, Residential Case Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Melissa Zintak was employed by the Handicapped Development Center from August 23, 2012 until July 12, 2013 when she was discharged from employment. Ms. Zintak was employed as a full-time residential counselor and was paid by the hour. Her immediate supervisor was the residential case manager, Lena Pillers.

Ms. Zintak was discharged from her employment based upon her failure to follow a reasonable and work-related directive to report to the CRS office on July 9, 2013 to catch up on late necessary paperwork.

Ms. Zintak was scheduled to work on Tuesday, July 9, 2013, to attend an in-service meeting from 10:30 a.m. until 2:30 p.m. that day. On the evening of July 8, 2013, Ms. Zintak was informed by another worker that Ms. Zintak would not be required to attend the in-service meeting. Residential counselors was required to notify their immediate supervisor if there is a change in their scheduling. Ms. Zintak did not notify her supervisor on July 8 but instead waited until 10:40 a.m. on July 9 to send her supervisor a message that the in-service meeting had been cancelled.

Ms. Pillers immediately sent a repeated message back to Ms. Zintak that Ms. Zintak would be required to come to the CRS office that day to work on overdue paperwork that Ms. Zintak had not previously completed or submitted. It appears that Ms. Pillers expected her to work on the late paperwork until 2:30 that afternoon. At approximately 11:20 a.m. the residential case manager again left Ms. Zintak a voice message specifically informing her that she was expected to be at the office and not approved to take time off from 10:30 a.m. until 2:30 p.m. The claimant returned the call at approximately 11:30 a.m. stating that she did not answer as she had been in the shower. The requirement that the claimant come in that day to the CRS office to complete paperwork was reinforced, mandatory nature of the directive, although Ms. Zintak indicated that she would report she did not do so.

The following day Ms. Zintak sent a long text message to the residential case manager explaining that she had been behind schedule in purchasing birthday gifts, purchasing gasoline for her car, making other preparations to go out of town for her daughter's birthday and that in effect time ran out and therefore she had not reported the previous day. Because the claimant had received numerous previous warnings for late paperwork and the employer concluded that the claimant had disregarded a specific work directive to report, Ms. Zintak was instructed not to report for her usual duties but instead to come to the office to work on the late reports.

On July 12 the claimant was called to a disciplinary meeting with the residential case manager and the assistant program director and at that time was informed that she was being discharged from employment based upon her failure to report as directed and her failure to complete paperwork on a timely basis per previous warnings. Ms. Zintak then asserted that she was requesting Family Medical Leave for her psychiatrist who she had visited earlier that morning.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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 upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

In this matter the evidence establishes that Ms. Zintak had been warned in the past for failure to submit required paperwork in a timely manner. The claimant was aware that the employer was under a legal obligation to submit supporting paperwork for billing and other services to clients. Ms. Zintak was scheduled to work from 10:30 a.m. until 2:30 p.m. on Tuesday, July 9, 2013 and knew that she was required to inform her supervisor of any change in her scheduling. The claimant did not inform her supervisor in advance that her schedule for July 9, 2013 had changed but instead left a message for her supervisor ten minutes after her workday was to have begun on July 9. The supervisor immediately contacted the claimant and informed her personally and by message that she was expected to work that day as she was far behind in paperwork and it was necessary for her to catch up during those hours. The claimant agreed to do so. Although the claimant agreed to do so, she did not report to CRS office as directed and did not complete paperwork that day. The following day the claimant sent her supervisor a long text message indicating that she had been running behind schedule the previous day and because she was engaged in other activities of a personal nature she had not reported as she had agreed. The employer concluded that the claimant's failure to report without providing timely notification on July 9 after being specifically instructed to do so was insubordinate grounds for termination. In addition, the employer felt that the claimant's failure to follow the work-related directive to come in and begin completing paperwork that was up to one month behind also gave an intentional disregard for the employer's interests and standards of behavior and a decision was made to terminate Ms. Zintak from her employment with Handicapped Development Center. The claimant was notified of her discharge on July 12, 2013. After being discharged the claimant attempted to invoke the Family Medical Leave Act.

The administrative law judge having considered the matter at length concludes that the claimant had the ability to report for at least a portion of her scheduled work shift on July 9, 2013 but disregarded a specific work directive to do so. The claimant did not provide notice to her employer that she would not be reporting that day after she had agreed to do so and the next day reported that she had chosen to engage in personal matters rather than reporting as directed. Based upon the necessity of providing timely completion of her paperwork and the warnings that had been served upon her and the work directives that had been given to her on July 9, 2013, the claimant's failure to make a reasonably effort to comply with these directions showed a willful disregard for the employer's interests and standards of behavior and was disqualifying. Unemployment insurance benefits are withheld.

Because the claimant has been deemed ineligible for benefits any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment and the amount of the overpayment. The employer's account shall not be charged because the employer did meaningfully participate at fact finding.

DECISION:

The representative's decision dated August 14, 2013, reference 01, is reversed. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether there is an overpayment and the amount is remanded to the UIS Division. The employer's account shall not be charged because the employer did meaningfully participate in fact finding.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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