

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACI L COLLIER
Claimant

APPEAL NO: 17A-UI-10276-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEVELOPMENTAL SERVICES OF IOWA
Employer

OC: 09/17/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 3, 2017, reference 01, 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 October 24, 2017. The claimant participated in the hearing with witness/former Front Line Supervisor Lora Pedersen. Stephanie Little, Human Resources Manager and Wendy Smith, Program Coordinator, 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 front line supervisor for Developmental Services of Iowa from October 5, 2015 to September 19, 2017. She was discharged for failing to meet the employer's expectations.

In June 2017, the claimant took over the responsibility of overseeing the hourly employees time reporting. She was responsible for monitoring the time tracker system of employees in the field to ensure the employer was correctly billing Medicaid for the services it provided clients with intellectual disabilities, mental illness and brain injuries.

The claimant previously did her own time tracker work and supervised employees' time tracker reporting in the 24 hour homes. The employer trained the claimant on monitoring the time tracker information for hourly employees June 7, 2017. Billing is done the 1st, 11th and 21st of every month and the employer conducts audits of the data entered. On July 7, 2017, the employer met with the claimant and reviewed her errors and made corrections. On August 7, 2017, the employer met with the claimant again and found she was still making the same errors. It retrained the claimant and helped her correct the information submitted.

On September 6, 2017, the employer issued the claimant a written warning because several days on the time tracker system were again inaccurate. The same discrepancies were showing up every billing cycle and caused delays in the billing process. The warning stated continued errors could result in termination.

After reviewing the time tracker information from September 11, 2017, the employer found the claimant was continuing to make the same errors. The employer was spending one to two hours, three times each month, correcting the claimant's mistakes for each 10 day billing cycle. The employer had to repay Medicaid for a number of the errors and the government was looking at the employer for improperly billing Medicaid. If the pattern continued without being corrected it is considered Medicaid fraud which would have put the employer out of business.

After reviewing the claimant's performance between June and September 2017, the employer made the decision to terminate her employment September 19, 2017, due to her work performance.

REASONING AND CONCLUSIONS OF LAW:

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

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant's role was extremely important as it related to billing Medicaid and repeated mistakes of the same kind without correction lead to the conclusion the employer is committing Medicaid fraud. The claimant repeatedly made the same errors during the three and one-third months she was handling the monitoring of the time tracker system for the hourly employees. Despite being retrained at least twice and going over her inaccuracies with the employer at least three times per month, she continued to repeat the same errors.

That said, however, the evidence does not establish 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. It appears the claimant was simply not equipped to handle the job in a manner that met the employer's expectations.

Given the issues involving Medicaid related to the claimant's position, the employer's decision to terminate the claimant's employment is understandable but the administrative law judge must conclude that her poor work performance was not intentional and does not rise to the level of disqualifying job misconduct as that term is used under Iowa law. Therefore, benefits must be allowed.

DECISION:

The October 3, 2017, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn