

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANNA K EGGERS
Claimant

APPEAL 15A-UI-09278-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLS AND DALES CHILD DEVELOPMENT
Employer

**OC: 07/19/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 11, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination the claimant was discharged 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 September 3, 2015. Claimant Anna Eggers participated on her own behalf. Employer Hills and Dales Child Development was represented by Attorney Joseph Kane and participated through Qualified Intellectual Disability Professional Nathaniel Hargrove, Personal Assistant Dominisha Britton, Personal Assistant Ryan Glaser, Life Skills Lead and Shift Supervisor Megan Bloedow, and Food Services Director Billi Jo Lugrain. Witnesses Carol Boge and Lisa Bernhard were also present but did not give any testimony. Employer's Exhibits 1 through 5 were received.

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 employed full time as a personal assistant beginning November 8, 2007, and was separated from employment on July 21, 2015, when she was discharged. As a personal assistant, the claimant was responsible for following the nurses' care plans for the residents and assisting the residents with every day activities such as eating or bathing. The claimant reported directly to Qualified Intellectual Disability Professional Nathaniel Hargrove.

On March 13, 2015, Hargrove issued the claimant a "Staff Performance Documentation" for incidents that occurred on March 1 and March 10, 2015. During the first incident, the claimant questioned a nurse's decision making and care plan for a resident. In the second incident, she told Food Services Director Billi Jo Lugrain in front of a resident that the resident did not want her "slimy oatmeal." The claimant was counseled she needed to communicate with dignity and respect and interact with colleagues in a respectful manner. Hargrove also reviewed the code of ethics with her. She was put on notice that further incidents would result in additional discipline. (Employer's Exhibit 5).

On June 19, 2015, the claimant was again disrespectful and negative when discussing changes that were made to the morning routine with Shift Leader Megan Bloedow and another Personal Assistant. The comments were made in front of a resident. Bloedow, told the claimant to stop making the comments and take her concerns to Hargrove; however, the claimant's comments continued. Hargrove and Lisa Bernhard issued the claimant a written warning and reviewed with her the rules of conduct and code of ethics. The claimant was also placed on a "Growth Plan." She was put on notice that she was to have no "incidents of disrespectful interactions with her coworkers" and no "incidents of reports of negative or challenging conversations with other staff or shift leaders" between June 23 and September 19, 2015. Hargrove would have weekly meetings with the claimant to discuss her interactions with others. The claimant was aware any further infractions would result in her termination. (Employer's Exhibit 4).

On July 6, 2015, while assisting a resident in the final stages of life, the claimant made defamatory statements about the resident's care. Specifically, she told co-workers that the nurses were killing the resident and the facility was allowing it. The employer received notice of the incident verbally the same day as well as a written report about the incident later in the month. (Employer's Exhibit 2). The claimant was suspended on July 16, 2015 so an investigation could be conducted. She was terminated on July 23, 2015 for violating her growth plan and continuing to make negative statements. (Employer's Exhibit 3).

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 § 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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). 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.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible. The claimant either explained away her behavior as being a joke or stated that other employees in the conversations were making the same comments. The employer provided witness testimony directly contradicting the claimant's explanations of the statements. The witnesses were sequestered and did not hear the testimony of the other witnesses before providing their own. The witnesses, particularly the other personal assistants, did not have as much of a vested interest in the outcome of the hearing as the claimant.

The employer has presented substantial and credible evidence that the claimant continued to make negative and disrespectful statements after having been warned. Her conduct and statements were made with a deliberate disregard of the employer's best interest and constituted a breach of the duties arising out of her employment contract. The claimant's repeated failure to conform to the employer's expectations of conduct and ethics after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The August 11, 2015, (reference 01) 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

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