

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILY R HOLLIDAY
Claimant

APPEAL NO. 11A-UI-08075-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SEQUEL YOUTH SERVICES
OF WOODWARD**
Employer

**OC: 05-15-11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 6, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 14, 2011. The claimant did participate. The employer did participate through (representative) Marcia Dodds, human resources director; Luke Sterbick, morning supervisor; Brett Hudson, group leader; and Tricia Godwin, program director. Employer's Exhibits A through H were entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a remedial treatment counselor, full-time, beginning October 1, 2008, through May 16, 2011, when she was discharged. On May 15 the claimant was alone in a room with a student, M.J., without any business reason. The student was not one of the claimant's clients that she was responsible for counseling. One of the claimant's coworkers confronted her about her behavior, but she ignored his admonition that she follow the rules regarding being alone with a student in a room. That same coworker called two supervisors at the end of his shift to report the claimant's behavior. The coworker reported the same information to both Mr. Sterbick and Mr. Hudson. The following day, the employer investigated and determined that the claimant had indeed violated the rule prohibiting an employee being alone and unsupervised with a student. The claimant had been warned previously about the same conduct and behavior both verbally and in writing. Her most recent warning was on April 19, when she was observed violating the rule about being alone with a student. She was warned at that time that one more infraction of the rule could lead to her discharge.

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.

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.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The administrative law judge is persuaded that the claimant repeatedly violated the employer's rule prohibiting a staff member from being alone in a room with a student. The administrative law judge is not persuaded that the claimant's coworker made up the incident or failed to report it to both Mr. Hudson and Mr. Sterbick. The claimant's repeated failure to accurately perform her job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The June 6, 2011 (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw