

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ARDITH J VIET
Claimant

APPEAL NO: 18A-UI-10911-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTH STAR COMMUNITY SERVICES INC
Employer

OC: 10/07/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 26, 2018, 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 November 26, 2018. The claimant participated in the hearing. Bridget Hartmann, Director of Operations and Valerie Schwager, Executive Director, 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 community living specialist for North Star Community Services, Inc. from April 9, 2010 to September 25, 2018. She was discharged for leaving a client alone for 20 minutes and failing to document her actions.

On September 7, 2018, the claimant was scheduled to work with a client from 1:30 p.m. to 6:30 p.m. The client's service plan requires staff to actively engage him with goals and supports. The claimant allowed the client to go to the laundry room by himself and he was involved in an incident with another tenant. He was gone approximately 20 minutes and the claimant did not indicate in her paperwork that she did not provide services or oversight during that time period.

The employer learned of the situation September 11, 2018, and met with the claimant September 13, 2018. The claimant received a written warning August 17, 2016, for providing inaccurate notes and failing to follow a client's service plan and received a written warning September 19, 2018, for failing to document honestly and not following a client's service plan. The employer terminated the claimant's employment September 25, 2018.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. 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 on such past act or acts. The termination of employment must be based on a current act.

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 employer was aware of the September 7, 2018, incident September 11, 2018, but waited to terminate the claimant's employment until September 25, 2018, which is 18 days after the situation occurred. Additionally, the claimant's warnings were over two years old at the time of the termination. While the claimant made an error in judgment by allowing the client to go to the laundry by himself and failing to document that action, this incident was not a current act of misconduct, as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The October 26, 2018, 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