

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KYLE R GRIMM
Claimant

APPEAL 17A-UI-08485-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SEQUEL YOUTH SERVICES OF
WOODWARD**
Employer

**OC: 07/23/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 10, 2017, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 6, 2017. The claimant participated personally. The employer participated through Marcia Dodds, human resources. Tonna Lawrenson, clinical director, also testified. Employer Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 clinical therapist and was separated from employment on June 28, 2017, when he was discharged (Employer Exhibit 1).

The employer operates a residential facility for delinquent youth, where the claimant worked as a clinical therapist. As such, he was responsible for submitting timely documentation regarding his visits with children, to the employer each Monday by 9:00 a.m., which was then used to bill for services rendered. Prior to June 20, 2017, the claimant had discretion to make his own schedule, so long as he completed his job duties.

In the weeks leading up to June 20, 2017, the employer completed an annual review with the claimant. At this time, it was addressed that he was behind on documentation. Due to continued issues with his documentation, and students complaining that they were not seeing him, the employer held a meeting on June 20, 2017, with the claimant and issued a corrective action (Employer Exhibit 1). The claimant was advised that he was expected to complete his

notes and documentation by 9:00 a.m. each Monday moving forward, and was expected to use professional, accurate language. Previously, the employer had received notice of “rejections” of documentation submitted by the claimant, in which he provided inaccurate information (such as listing the wrong student’s name in their file) or had incomplete notes for billing purposes. He was further advised he would have to give a copy of his proposed schedule each week to Ms. Lawrenson by 9:00 a.m. each Monday.

The following Monday, June 26, 2017, the claimant did not submit his schedule to the employer, or his completed notes from the week prior. He stated he was at home catching up on documentation. He did not respond to a text message from Ms. Lawrenson or a phone call from Ms. Dodds on Tuesday. When he did respond on Wednesday, June 28, 2017, he was requested to attend a meeting and subsequently discharged.

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 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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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).

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). In this case, the claimant knew or should have known his job was in jeopardy based on the corrective action plan which identified two specific requirements: to complete notes and submit his schedule on Monday by 9:00 a.m. each week. The claimant did not comply with either requirement the first Monday after his corrective action had been issued. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The employer's request for timely documentation was reasonable, given it was a basis for billing for services. The employer's request to have the claimant submit a schedule each week was also reasonable in light of his incomplete work, and ongoing complaints by students he treated. The claimant made no good faith effort to meet either requirement on June 26, 2017, when he stayed home, to reportedly catch up on documentation, but did not submit his documentation or proposed schedule, as requested. The claimant did not present any evidence to mitigate his non-compliance with the employer's reasonable request. The administrative law judge is persuaded the claimant knew or should have known that his failure to comply would result in his discharge, and his conduct was contrary to the reasonable expectations of the employer. The employer has established the claimant was discharged for reasons that would constitute misconduct. Benefits are denied.

DECISION:

The August 10, 2017, (reference 03) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn