

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH J ANDERSON DECK
Claimant

APPEAL NO: 14A-UI-01745-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACKSON RECOVERY CENTERS INC
Employer

OC: 01/19/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Sarah J. Anderson Deck (claimant) appealed a representative's February 7, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Jackson Recovery Centers, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 10, 2014. The claimant participated in the hearing and was represented by William Deck, attorney at law. Mary Kating appeared on the employer's behalf and presented testimony from three other witnesses, Kimberlee Niemeier, Ashley Ledgerwood, and Janelle Tomason. On March 11, 2014 the claimant filed a motion to reopen the record to submit documents. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the hearing record be reopened? Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

On the afternoon of March 3, 2014 the claimant, through her attorney, requested issuance of a subpoena to the employer for certain documents. The subpoena was issued on March 5. The subpoenaed documents were not provided by the employer to the claimant until after the March 10 hearing. During the hearing on March 10 the claimant did not make an objection to proceeding with the hearing due to the failure of the employer to provide the documents prior to the hearing.

The claimant started working for the employer on September 29, 2008. As of June 2011 she worked full time as a clinical supervisor in the employer's substance abuse treatment program.

Her last day of work was January 20, 2014. The employer discharged her on that date. The reason asserted for the discharge was fraudulently documenting that she was present for group sessions when she was not present.

On January 20 Ledgerwood, a therapist who had previously worked under the claimant's supervision, reported to Niemeyer that she had concerns about the claimant doing documentation notes about an outpatient group's sessions when the claimant had not been present. Niemeyer went back and determined that there were five group sessions from late September through the end of October where the claimant had entered notes for the group sessions but had not been present, and that some of those entries had resulted in billing to Medicaid. The claimant did not deny that she had not been present, but indicated that as she had been Ledgerwood's supervisor at the time and at the time Ledgerwood was not yet credentialed, she had not believed it to be improper for her to review Ledgerwood's documentation of the sessions and enter the notes. She was under the belief that such group sessions were not eligible for billing to Medicaid and did not realize her entry of notes would result in billing to Medicaid.

The claimant had not previously been disciplined for questionable note entries, but on August 26, 2013 she had been given a written warning for attendance and availability, and had been given a performance action plan regarding following through on issues. Because the employer concluded that the claimant's entry of the notes in September and October constituted fraud, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant's request to reopen the hearing should be granted or denied. After a hearing record has been closed the administrative law judge may reopen the record for demonstrated good cause. 871 IAC 26.14(2). The claimant did not object to proceeding with the hearing in the absence of the documents, and has failed to preserve error on that issue. Further, the information sought to be submitted by documentary evidence would be repetitious of verbal testimony provided in the hearing. Therefore, the claimant's request to reopen the hearing is denied.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is that she committed fraud through entering session notes where she was not present for the group session. Under the circumstances of this case, the claimant's entry of the notes for sessions for which she was not present was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 7, 2014 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css