

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ULLONDA L STOCKDALL
Claimant

APPEAL NO: 11A-UI-12467-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC
Employer

**OC: 08/14/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 9, 2011, reference 01, that held she was discharged for misconduct on August 18, 2011, and benefits are denied. A telephone hearing was held on November 15, 2011. The claimant participated. Marcanne Lynch, HR Director, Traci Miner, Manager, and Tracy Moore, Team Leader, participated for the employer. Employer Exhibits 1 – 10 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time support living technician on November 2, 2009, and last worked for the employer on August 18, 2011. The claimant received employer recording service activities policy that requires recorded entries in a consumer's progress notes for service(s) not later than 72-hours after the encounter. The employer issued a "Timeliness of Documentation" memo on September 21, 2010 with a "Documentation Update" to claimant/staff on September 1, 2011, as a reminder of the timeliness for recording service requirement.

The employer issued claimant a series of progressive discipline written warnings from December 20, 2010 thru June 28, 2011 for failing to meet the timeliness service recording requirement. The claimant responded she agreed with the employer action. She was suspended on June 3. When the employer learned claimant had a further service documentation timeliness issue, it gave her a further suspension on June 28 rather than termination. Claimant was put on notice that a further late documentation would result in termination.

Quality Assurance issued a report on or near August 18 that claimant submitted late service documentation for a client during the period of July 5 thru July 11. Administrator Miner reviewed the report to confirm the timeliness policy violation(s) and terminated claimant on August 18

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on August 18, 2011, for a repeated violation of company policy.

The claimant knew the employer policy due to prior warnings and suspensions, and her repeated violation for the same offense constitutes job disqualifying misconduct. The employer followed its progressive disciplinary policy and gave claimant a second chance after a first suspension by a further suspension rather than termination on June 28. The claimant

consistently agreed with the employer discipline up to termination that negates her contention she was over-worked in failing to meet the requirement. The employer also rebutted claimant's contention that QA failed to consider the service requirement documentation delay was due to re-work and/or resubmission.

DECISION:

The department decision dated September 9, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on August 18, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs