

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NANCY C BUNT**  
Claimant

**LUTHERAN SERVICES IN IOWA INC**  
Employer

**APPEAL 17A-UI-10638-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/24/17  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the October 13, 2017, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 2, 2017. The claimant participated and testified. The employer participated through Facility Program Supervisor Michelle Cook.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a care coordinator from July 25, 2017, until this employment ended on September 29, 2017, when she was discharged.

In her role as a care coordinator claimant's job duties consisted primarily of supervising visits with families involved in the Juvenile Court system. Claimant was responsible for ensuring the safety of children and families during these visits and writing notes on the visits for review by the Iowa Department of Human Services (DHS).

On September 23, 2017, claimant was supervising a visit between a baby and father. Approximately 30 minutes into the visit, the baby's mother emerged from a room in the home. Claimant advised the parents there was possibly a no contact order in place between them, but allowed the visit to continue. (Exhibit 2). The visit was ended one hour later when the father

became agitated and claimant became concerned with the safety of the child. When the visit ended claimant attempted to call her immediate supervisor, Cook, to summarize what had happened, but did not get an answer and did not leave a voicemail. Claimant noted the situation in her case notes, but made no further attempt to notify her supervisor or DHS. When DHS and the county attorney assigned to the Juvenile Court case learned what had happened, they confirmed the no contact order was still in place, and requested the Juvenile Court Judge order a second care coordinator be assigned to the case. (Exhibit 1). This request was granted and claimant was subsequently discharged from employment. (Exhibit 4).

Claimant testified she understood what a no contact order is, that it is an order issued by a judge, and one was in place due to prior domestic violence between the parents. Claimant explained, however, there had been some confusion as to whether the no contact order had been lifted just four days prior and that confusion had not yet been resolved. Claimant further testified she was never trained on what to do in a situation where there was a possible no contact violation during a visit. Cook testified claimant should have known what to do in this type of situation, as employees are given a sheet produced by DHS walking them through what steps to take if a no contact order is violated during a visit. Cook further testified this is reviewed in orientation. No supporting evidence or documentation was provided to show claimant actually received this training or information. Claimant testified she was told the employee handbook was online, but never had a chance to review it. Claimant denied receiving the documentation or training described by Cook.

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 24, 2017. The claimant filed for and received a total of \$2,038.00 in unemployment insurance benefits for the weeks between September 24 and October 28, 2017. Both the employer and the claimant participated in a fact finding interview regarding the separation on October 12, 2017. The fact finder determined claimant qualified for benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was an extremely grievous incident of poor judgment. Claimant, whose primary job responsibility was to ensure the safety of children and families during supervised visits, allowed a visit to continue with both parents present, knowing there had been a history of domestic violence and was possibly a no contact order in place. This posed an unnecessary risk to the minor child and was extremely careless. However, claimant provided credible testimony that she was never given the proper training and tools to know what to do when such a situation occurred and that, as soon as she felt the situation had become unsafe, she removed the child. The employer failed to provide any documentation or supporting evidence showing claimant was trained on the proper procedures. While this may seem like common sense information to many, that opinion is subjective, and impermissibly shifts the burden of proof the claimant.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Claimant could not have possibly willfully disregarded policies or procedures of which she was never made

aware. Inasmuch as employer had not provided claimant with the proper tools and training on such a situation, or previously warned her about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. As the employer has not met its burden, benefits are allowed, provided claimant is otherwise eligible. The issues of overpayment and participate are thereby moot.

**DECISION:**

The October 13, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs