

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEXANDRA R BURT
Claimant

APPEAL 20A-UI-09000-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 05/03/20
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Alexandra Burt (claimant) appealed a representative's July 16, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with REM Iowa Community Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 14, 2020. The claimant participated personally. The employer participated by Angela Reisdorf, Area Director. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 8, 2019, as a full-time program supervisor. As a requirement of the position, she had to pass a background check upon hire and upon demand. On April 27, 2020, the employer discovered information that indicated the claimant might not pass this test. The claimant did not give her permission to allow the employer to run the verification. The employer placed the claimant on suspension until the claimant gave her permission to run the test.

In July 2020, the claimant left a message for the employer stating it could run the test on September 29, 2020. On July 29, 2020, the employer sent the claimant a letter by FedEx. The claimant signed for receipt of the letter on July 30, 2020. The letter indicated the claimant was to discuss her employment situation with the employer by August 3, 2020. The claimant did not attempt to make contact. The employer separated the claimant from employment for non-compliance.

The claimant filed for unemployment insurance benefits with an effective date of May 3, 2020. Her weekly benefit amount was determined to be \$488.00. The claimant did not receive any

state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after May 3, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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).

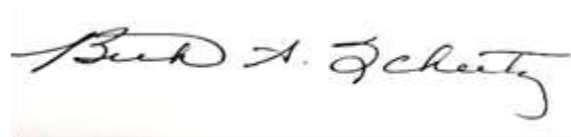
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. She failed to submit to a background check and appear in front of the employer to discuss her employment situation. The claimant's disregard of the employer's interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits as of April 27, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, she may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

DECISION:

The representative's July 16, 2020, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Beth A. Scheetz
Administrative Law Judge

September 17, 2020
Decision Dated and Mailed

bas/sam