

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE SANDERS

Claimant

APPEAL 19A-UI-09513-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC

Employer

OC: 10/20/19

Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

REM Iowa Community Services (employer) appealed a representative's November 21, 2019, decision (reference 01) that concluded Michelle Sanders (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 6, 2020. The claimant did not provide a telephone number where she could be reached and, therefore, did not participate. The employer participated by Abigayle Davis, Program Director, and Antwan Harper, Program Director. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is 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 July 2, 2012, as a full-time direct support professional. The employer had policies but was unsure when the claimant signed for receipt of them. The Code of Conduct stated that employees must know the policies and report violations. Prior to an offer of work or an offer of rehire, the employer may perform a background check. If there are criminal charges, or perhaps convictions, an employee may not work for the employer.

On October 10, 2019, the claimant told the employer she had to go to court because a person filed some sort of restraining order or charge against her. The program director thought the claimant had a domestic abuse charge or conviction, even though the two did not reside together. The employer placed the claimant on suspension until she could prove her innocence with documentation. No behavior occurred at work.

The claimant provided court documents proving she was not convicted of anything and the employer returned her to work on November 21, 2019.

The claimant filed for unemployment insurance benefits with an effective date of October 20, 2019. She received unemployment insurance benefits for the four week period ending November 16, 2019. The employer participated personally at the fact finding interview on November 20, 2019, by Abigayle Davis and Antwan Harper.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or

disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show willful or deliberate misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative’s November 21, 2019, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn