

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEGGY J COLLETT
Claimant

APPEAL NO. 11A-UI-05738-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSSROADS OF WESTERN IOWA
Employer

**OC: 03/27/11
Claimant: Respondent (1)**

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 19, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 23, 2011. Claimant participated. Employer participated by Deanna Johnson, Director of Services, and Kris Rotnicke, Residential Coordinator. The record consists of the testimony of Deanna Johnson; the testimony of Peggy Collett; and Employer's Exhibits 1-4.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides services to individuals with disabilities. The claimant was hired on October 14, 2010, as a residential coach. The claimant provided services to the employer's clients, known as consumers, in their homes. She was a full-time employee. Her last day of work was March 7, 2011. She was terminated on March 7, 2011.

One of the claimant's responsibilities was to prepare a contact note each time she provided services to a consumer. These contact notes were extremely important and were to be turned in within 24 hours after the service was provided. If, for example, the claimant provided services to three different consumers in one day, three contact notes would be prepared. The claimant was paid to prepare these contact notes. The contact notes were used to bill Medicaid. Without the notes, Medicaid could not be billed and the employer would not receive payment so that its employees could be paid.

The claimant had problems turning in her paperwork on time. She was trained and coached on how to do the paperwork. She was given a written warning on December 7, 2010. She was given another written warning on February 25, 2011. She was informed on February 25, 2011, that all her paperwork had to be turned in by March 4, 2011, or she would be terminated. The

claimant and the employer do not agree on whether the paperwork was turned in on March 4, 2011. The employer's position is that the paperwork was turned in on March 7, 2011, which was after the deadline that had been imposed.

The claimant suffers from Attention Deficit Disorder (ADD). She was diagnosed in 2005. She is under the care of psychiatrist and takes medication. The claimant gets overwhelmed when she gets behind and has trouble concentrating and completing her tasks.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes unsatisfactory performance is that unsatisfactory performance is due to incapacity or inability on the part of the claimant. The employer has the burden of proof to establish misconduct.

The difficult issue in this case is whether the claimant's failure to turn in her paperwork in a timely manner was due to insubordination on her part or her inability and incapacity to do the work in a timely manner. The evidence established that the claimant was never able to turn in her paperwork within 24 hours despite training and coaching and written warnings from the

employer. The claimant testified that she suffers from ADD and that she has difficulty concentrating and “staying on task.” She takes medication for this problem and sees a psychiatrist. Deanna Johnson testified that she believed the claimant was unwilling to prepare the paperwork as required.

The administrative law judge understands how important it was that the paperwork be prepared in a timely manner. The employer had good business reasons for terminating the claimant. However, the most reasonable inference from the evidence is that the claimant was simply incapable of doing the paperwork in a timely manner. There was no evidence that she had ever properly prepared the paperwork. This is not a case of where a claimant had done her job in a satisfactory manner and then refused to perform as required. The claimant was never able to do the job as required. Under these circumstances, the administrative law judge concludes that the claimant’s actions do not meet the legal definition of misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated April 19, 2011, reference 01, is affirmed. unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css