

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAYLA CLEAR
Claimant

APPEAL NO: 09A-UI-14893-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SOUTHERN IOWA RESOURCES FOR
FAMILIES INC**
Employer

OC: 08/30/08
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Gayla Clear (claimant) appealed an unemployment insurance decision dated September 28, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Southern Iowa Resources for Families, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 3, 2009. The claimant participated in the hearing. The employer participated through Sharon McNeill, Human Resources Director; Sarah Sidie, HCBS Residential Coordinator; and Earl Kilgore, Executive Director. Employer's Exhibits One through Five were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

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 as a full-time supported community living specialist on October 3, 2006. The employer provides care and support for persons with developmental disabilities and the claimant worked in a 24-hour care site for two clients. She was promoted to a lead specialist on September 10, 2008 and was relieved of the lead specialist duties on August 7, 2009. The claimant was discharged on September 4, 2009 for a repeated failure to follow directives.

When 24-hour care is provided, it is essential to coordinate information between the different shifts so that continuous care can be provided without problems. Each employee is therefore required to work as a team with the other employees and with the coordinator, who supervises each site. A house managers' meeting was held on April 15, 2009 and it was stressed how important it was for the managers to communicate with the coordinator. Copies of all documents needed to be placed in the site file but also in a weekly file for the coordinator. The

coordinator provided documentation as to what forms needed to be filled out and turned into the office. The coordinator needs to be updated on issues that occur within each site and this documentation must be updated on a daily basis.

On May 4, 2009 the claimant received a renewal form for a DHS client for whom she provides care and she gave that form to another staff member to complete. The staff member was unsure how to complete the paperwork and called another lead staff for assistance. The other lead staff informed the coordinator that the staff member was given a task with no instructions. The coordinator asked the claimant why she passed the form to the staff member without instructions and the claimant said she did not know how to complete the form. The coordinator advised her that she needed to contact the coordinator with questions on anything if she did not know how to handle it. On May 6, 2009 the claimant provided an employee contact form on which the staff member did not sign the medication form after passing medication. The coordinator advised the claimant if she received any additional medication forms which the staff failed to sign, the claimant needed to provide an extra copy to the coordinator.

The coordinator informed the claimant on May 14, 2009 that staff members were not to take clients out in the community to apply for jobs since that job is specifically assigned to someone in supported employment. The claimant was not turning in the client's weekly budget and the coordinator asked about it. She said the client does not prepare a budget because "he just gets what he needs by going through the store." The coordinator advised the claimant in a warning on June 22, 2009 that it was her responsibility to assist the client in money management and budgeting so that the client learned money skills. There were complaints from staff members that the claimant would not listen to them and did what she wanted to do. The coordinator spoke with the claimant on July 1, 2009 and the claimant said she was having trouble with a particular staff member. However, she had failed to document anything on an employee contact form and was advised she needed to do so if having problems with staff.

The claimant made several comments as to how she felt inadequate in performing some of the job duties of the lead staff and should maybe step down. She also stated that she did not know if she was cut out for the job on August 4, 2009. The employer was appreciative of the claimant's efforts but agreed that she needed to step down and she was placed back in a specialist position as of August 7, 2009.

She assisted a client with a work problem at his job site on August 13, 2009 which is outside of her job duties and the claimant had been previously warned about this same policy violation on May 14, 2009. On August 17, 2009 the claimant reported to the coordinator that a staff member had used a client's phone and created a 70 cent charge on the bill. The coordinator advised the claimant that she would handle the issue with the staff member. However, the coordinator subsequently learned that the claimant had addressed this with the staff member in front of a client and had accused the staff of theft. The client later called the executive director to report the incident and the claimant was overheard coaching the client on what to say. Consequently, the employer suspended the claimant for three days on August 20, 2009 and placed her on 30 days' probation.

The claimant was discharged on September 4, 2009 after she twice changed staff schedules without authorization and made a negative remark about another staff member while in front of a client. The coordinator learned on September 1, 2009 that the client had an appointment in Des Moines, Iowa that morning but no staff was scheduled to work at the site or with the client. The coordinator asked the claimant about it and the claimant said she took care of it, even though schedule changes may only be changed by the coordinator. On September 3, 2009 the claimant attempted to discuss the repairs made to the company van with the executive director

and he directed the claimant to talk with the coordinator. The coordinator spoke with the claimant and the claimant complained about how much money the employer paid for the van when the money could have gone to staff raises. The claimant also complained that the executive director was rude to her and that someone needed to get the executive director out of his position as she is, "tired of his shit!" She brought the van to the coordinator on September 4, 2009 and complained about how much money was paid for a leather strap for the lift. She also complained about the staff member who had used the client's phone and was advised that it had been handled. The claimant then informed the coordinator that she and another employee had switched shifts for the day. The coordinator reminded the claimant again that she was not allowed to change schedules.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for a repeated failure to

follow directives. 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). The record demonstrates the claimant had a pattern of doing things her way even when it was in violation of company policy. She had been placed on probation but continued to disregard the employer's directives. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated September 28, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs