

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CONTERRA L BATIE
Claimant

PRK WILLIAMS INC
Employer

APPEAL 21A-UI-04384-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/20
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

STATEMENT OF THE CASE:

PRK Williams, Inc, the employer/appellant, filed an appeal from the January 22, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 31, 2021. The employer participated through Cyndi Leitheiser, human resources generalist. Ms. Batie did not register for the hearing or participate. Employer's Exhibits 1-13 were admitted into evidence. Official notice was taken of the administrative record.

ISSUE:

Was Ms. Batie discharged for disqualifying job-related misconduct?
Was Ms. Batie overpaid benefits?
If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Batie began working for the employer on December 4, 2019. She worked as a full-time human services supervisor. Her employment was terminated on October 20, 2020.

The employer provides housing and services to people living with intellectual and developmental disabilities. Ms. Batie's job was to oversee one of the houses where the employer's clients lived and received services. Ms. Batie's job required her to write case notes for each client for whom she provided services within a specific timeframe. The case notes were necessary for the employer to track the clients' progress and so that the employer could receive payment for the services it provided to the clients.

Ms. Batie was given verbal counseling on February 4 for 24 incidents of not writing case notes during the month of January. Ms. Batie was given verbal counseling again on May 15 for not writing case notes. Ms. Batie was given a written warning on June 25 for not writing 7 case

notes during the month of May 2020. Ms. Batie was given a final warning on July 13 for not writing 10 case notes during the month of June and July. That same day, the employer put Ms. Batie on a 30 day performance improvement plan (PIP) to try to correct the issue. The employer took this step to try to retain Ms. Batie as an employee. The employer put Ms. Batie on an extended PIP on August 28 to try to retain Ms. Batie as an employee.

Ms. Batie was absent from work from September 22 through October 19 on excused absences due to medical issues. Ms. Batie returned to work on October 20. The employer terminated Ms. Batie's employment that day for not completing 32 case notes in September.

During the time Ms. Batie worked for the employer she averaged 25 hours of overtime per week. Ms. Batie could not explain why her job performance did not meet the employer's expectation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Batie 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.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

In this case, within one month of starting the job Ms. Batie was not meeting the employer's expectations. Despite working an average 25 hours of overtime each week, this pattern continued throughout Ms. Batie's employment with the employer as evidence by the write-ups, PIP, and extended PIP. The employer has not established that Ms. Batie has ever had a sustained period of time during which she performed her job duties to employer's satisfaction. Inasmuch as Ms. Batie did attempt to perform the job to the best of her ability but was unable to meet the employer's expectations, the employer has established intentional misconduct on the part of Ms. Batie. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Benefits are allowed.

Because Ms. Batie is eligible for benefits, the issues of repayment and chargeability are moot.

DECISION:

The January 22, 2021, (reference 01) unemployment insurance decision is affirmed. Ms. Batie 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.



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April 2, 2021
Decision Dated and Mailed

dz/kmj