

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINE A MCMAHAN
Claimant

APPEAL NO. 16A-UI-10270-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 08/07/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. filed a timely appeal from a representative's decision dated September 12, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 5, 2016. Claimant participated. The employer participated by Ms. Joanna Miller, Human Resource Coordinator, Ms. Jennifer Green, Manager, and Mr. Ronald Calvert, Director of Services at Home. Employer's Exhibits A through F were admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharged for intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Kristine McMahan was employed by the Good Samaritan Society, Inc. from December 1, 2013 until August 10, 2016 when she was discharged from employment. Ms. McMahan was employed as an as needed residential care giver and was paid by the hour. Her immediate supervisor was Ms. Jennifer Green.

Ms. McMahan was discharged on August 10, 2016 based upon the employer's belief that the claimant intentionally refused to return to a meeting after being directed to do so by her supervisor.

Ms. McMahan had been notified in advance that she needed to come to the Good Samaritan offices for a meeting to take place on August 10, 2016. The claimant had attempted to report earlier, however, the employer wanted to hold the meeting at the time specified on August 10 because more than one issue was to be discussed and the Director of Services at Home needed to be included. Ms. McMahan reported for the August 10 meeting at the time set by the employer. During the meeting the issue of whether the claimant's daughter had been at a client location was discussed and a decision was made by the employer to issue Ms. McMahan a

written warning informing her that any further violations could result in termination from employment. Ms. McMahan was upset because of the warning believing that her violation had been minor and that other employees often violate the rule. Claimant was told that she was not required to sign the warning and did not do so. After approximately one minute of silence when no other issues were raised, Ms. McMahan left the meeting believing that it was over. Claimant also was aware that she had a care giver shift that was to begin at a client's home and needed to drive to the location.

After the claimant had left the meeting room, her immediate supervisor, Ms. Green, called the claimant into the parking lot and at that time told Ms. McMahan the meeting was not yet done and that there were other issues. Ms. McMahan responded, "This is not right. . .I've got to go" and left the parking lot in her automobile.

Upon arriving at the client's location approximately five minutes before her shift was to begin, the claimant was informed by another care giver that arrangements had been made by the employer to cover the claimant's shift until 3:00 p.m. The other care giver was advised by the employer by telephone to have Ms. McMahan wait at the client location. Ms. Green and Mr. Calvert followed the claimant to the client location whereupon the claimant was discharged for insubordination based upon her refusal to return to the meeting at the society's offices.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

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).

In discharge cases, the employer has the burden of proof to establish disqualifying misconduct on the part of a claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

In the case at hand, the claimant had been told to report to a meeting and reasonably concluded that the meeting had ended after she had been issued a final disciplinary warning and told that she was not required to sign it. When nothing else was addressed within a reasonable period of time, Ms. McMahan concluded that the meeting had ended and left so that she could arrive at her 11:00 a.m. client location on time. Although the claimant was approached by her immediate supervisor in the parking lot and told that the meeting was not done, the claimant reasonably believed that she was expected to report to the client location on time or face a further warning which would result in termination from employment.

The evidence establishes that Ms. McMahan went directly to her 11:00 a.m. shift at the client's residence and only upon her arrival was informed that the employer had made arrangements for the previous shift to stay over because the employer anticipated that the 10:15 a.m. meeting that day would last longer. The administrative law judge concludes that at the time Ms. McMahan was given the instruction to return, her refusal was based only upon her desire to report to her work shift on time and avoid further warnings. Claimant had not been given advanced warning that the meeting would be long lasting, nor given the opportunity to carefully reflect about her decision before making it.

The question before the administrative law judge is not the propriety of the decision to terminate Ms. McMahan for this reason. While the employer's reason to terminate Ms. McMahan may have been a sound decision from a management viewpoint, the evidence in the record does not establish that the claimant's refusal was motivated by bad intent sufficient to warrant the denial of unemployment insurance benefits. Accordingly, the claimant is eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated September 12, 2016, reference 01, is affirmed. Claimant was discharged under no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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