IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BARBARA HUBLER
Claimant

BETHANY LUTHERAN HOME INC
Employer

APPEAL NO: 15A-UI-04632-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/08/15
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 8, 2015, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 27, 2015. The claimant participated in the hearing. Cindy Shaff, Administrator; Wendy Smith, DON; and Jodi Hargenes, LPN Charge Nurse; participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time unit manager/RN for Bethany Lutheran Home from March 7, 2012 to March 10, 2015. She was discharged after the employer determined she was not managing her area to its expectations.

The claimant was the unit manager for the first floor of the employer's facility. She was responsible for direct resident care, monitoring residents' overall behavior and their care needs, overseeing staff, implementing new policy changes; and making sure residents' care plans were implemented and followed. She worked with the minimum data sets (MDS) coordinator who tracks the residents' activities of daily living (ADL) in compliance with caring for residents with regard to the ADL such as transfers, treatment, diagnosis for medications, among other duties, which led to building the residents' care plans.

The employer alleges the claimant failed to participate in weekly Medicare and care plan meetings or the daily huddle meetings. The employer believed the claimant skipped the care plan meetings when difficult residents or families were involved. Residents' families often went to the unit manager for the second floor, Jennifer Ebling, because they felt the claimant was detached. That led to Ms. Ebling feeling she did not have a partner and was stuck doing the majority of the work including the care planning on Wednesdays.

The claimant was not reviewing the documentation for Medicare and high risk residents, infections, falls, and general documentation. Additionally, she was not working her regularly scheduled hours of 7:30 a.m. to 5:00 p.m. or 9:00 a.m. to 6:00 p.m. on the days the DON had the unit managers and MDS coordinators rotate and come in late and stay late to help with feeding residents. She was often leaving early and on the days she was scheduled to come in at 9:00 a.m. the claimant usually did not come in until 3:00 or 3:30 p.m. as was the case March 10, 2015. The claimant had at least one other job while working for this employer. She was teaching at Methodist College from 9:00 a.m. to 2:00 p.m. some days and 5:00 p.m. to 10:00 p.m. on other days. The employer felt her other jobs were interfering with her full-time job with the employer.

The previous DON, who was discharged the same day the claimant's employment was terminated, spoke to the claimant on occasion about her performance but with the exception of one written warning regarding the claimant's attendance February 3, 2015, never issued the claimant any documented verbal warnings or written warnings. The claimant's performance would improve after the previous DON spoke to her but she would soon regress to her previous behaviors.

The employer has a progressive disciplinary policy that calls for verbal counseling, two written warnings, and a suspension or termination after the second written warning. The employer chose not to follow its policy because it believed the former DON had spoken to the claimant several times about her actions but they continued.

The employer determined the claimant's behaviors were not providing a good role model for the rest of the staff and that the claimant was no longer "a good fit" for the employer. Consequently, it waited for the claimant to report for work March 10, 2015, and when she showed up at 3:00 p.m. she was escorted to the employer's office. The employer told the claimant her management style was not working for the employer and the claimant became angry and stated, "I quit." On the way out of the building the claimant told several others she had been fired. The employer planned to terminate her employment before the claimant stated she quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.
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> 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).

The first issue is whether the claimant quit or was discharged. The administrative law judge finds the claimant's employment was terminated. In order for a separation to be considered a voluntary leaving of employment, the claimant must have the intent to terminate the employment relationship accompanied by an overt act of carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The employer planned to terminate the claimant's employment and the claimant was aware of that at the time she blurted out that she quit. Prior to entering the room and surmising from the employer's statements she was going to be discharged, the claimant had no intention of voluntarily leaving her employment. Consequently, this case must be analyzed as a termination of employment.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant certainly did not meet the employer's expectations in her performance as a unit manager, the employer was unable to provide any documentation of the Medicare and care plan meetings the claimant failed to attend, documentation she failed to complete in a timely manner, or the days she failed to work her scheduled hours. Additionally, the employer did not follow its progressive disciplinary policy with regard to warning the claimant about her behaviors. Although the employer's testimony was credible, without documentation of the above-stated issues and the fact the employer did not follow its progressive disciplinary policy, the administrative law judge must conclude the employer did not meet its burden of proving disqualifying job misconduct. Therefore, benefits must be allowed.

DECISION:

The April 8, 2015, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/pjs