IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARTHA M UPTON
Claimant

RESCARE INC
Employer

APPEAL NO: 09A-UI-05043-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/08/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Martha M. Upton (claimant)) appealed a representative's March 26, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from ResCare (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on April 27, 2009. The claimant participated in the hearing. Kris Martin appeared on the employer's behalf and presented testimony from two other witnesses, Erica Blackman and Gretchen Dodds. During the hearing, Employer's Exhibit One was entered into evidence. The record was left open through May 1 for submission of a specific document from the employer and for any objection to that proposed exhibit being entered into the record from the claimant. The claimant did not make an objection to the document being entered into the record, and it was therefore entered to the record as Employer's Exhibit Two. The claimant did send in some additional potential exhibits on her part that were not discussed during the hearing and no provision was made for those to be offered or tendered; they were not admitted to the record. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on November 22, 2004. She worked full time as community support staff person at the employer's Burlington community services and independent living facilities for mentally ill or retarded persons. Her last day of work was March 5, 2009. The employer discharged her on that date. The stated reason for the discharge was repeated violation of company policy.

The claimant had received warnings on November 19, 2008 for not showing for her shift, on November 28, 2008 for not working her scheduled shift and on December 1, 2008 for rescheduling clients contrary to directives. On February 4, 2009 she received two warnings,

one for a no-call, no-show, and another, designated as a final warning, for insubordination, inattention to work, and tardiness. The warning specified that it was a "'last chance' with explaining the importance of following her schedule provided to her . . if Martha is late to customers without a previous understanding from her supervisor, then Martha will be immediately terminated."

On March 4 the claimant was scheduled to pick up a client at his work at 2:00 p.m. Ms. Dodds, the service coordinator, saw the claimant arrive at approximately 2:20 p.m. The claimant had been given this client's schedule in a meeting on January 7, 2009, which specified that Monday through Friday he was to be picked up at the bank where he worked at 2:00 p.m. She had been scheduled for the client for the afternoon shift on March 4 including 2:00 p.m. at least as far back as February 20. When questioned, the claimant's explanation was that she had not realized she was to pick him up at work until she went to his residence and he was not there. As a result of this final incident, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's inattention to her work schedule and repeated failure to timely be there for the client after prior warnings 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. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's March 26, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 5, 2009. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs