

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARYBETH HAMMEN**  
Claimant

**MOSAIC**  
Employer

**APPEAL 15A-UI-09045-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/19/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 4, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 31, 2015. Claimant participated. Employer participated through employer representative, Thomas Kuiper, human resources specialist, Doris Holmes, and direct support manager, Kailee Russell. Employer Exhibits One through Ten were admitted into evidence with no objection. Claimant Exhibit A was admitted into evidence with no objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a direct support associate from April 1, 2012, and was separated from employment on July 15, 2015, when she was discharged.

The employer has a policy that all documentation is supposed to be completed within 24 hours (one business day). This policy is verbally communicated to the employees. It is an expectation through an employee's evaluation and also an expectation in the employee handbook. Documentation is very important for employer; if documentation is not completed timely, the next employee does not know what was done with the individual on the prior day. If the employer is not timely in its documentation, it is considered Medicaid fraud, which may result in a huge fine for the employer and the employer could lose its accreditation upon multiple occurrences. Claimant was aware of the importance in completing the documentation. The employer also has a disciplinary policy. The employer rarely terminates off of one incident. Employees are usually warned (verbally or written) if there is an issue and if it is not corrected within in the time frame, then another warning (always written) may be issued. If the issue is still not corrected, then it could lead to termination.

On June 30, 2015, claimant was given a written warning because she did not get her documentation completed timely. Employer Exhibit One. This occurred for a period from June 2, 2015 through June 18, 2015. Employer Exhibit One. Claimant went on vacation on June 19, 2015 without her documentation being done. Employer Exhibit One. Employees are required to have documentation done prior to leaving for vacation. Claimant was aware she needed to have her documentation done prior to leaving, but she did not get it finished. Employer Exhibit One. On June 30, 2015, the employer gave claimant until July 2, 2015 to get herself caught up on her documentation. Employer Exhibit One. Claimant did catch herself up by July 2, 2015. Claimant was warned that her job was in jeopardy. Employer Exhibit One. Claimant was warned that she must improve documentation and maintain it. Employer Exhibit One.

On July 14, 2015, claimant was given a written warning for not getting her documentation completed from July 2, 2015 through July 9, 2015. Employer Exhibit Three. The employer gave claimant until the end of the day (July 14, 2015) to catch up on her documentation. Employer Exhibit Three. Claimant was warned twice that her job was in jeopardy on this written warning. Employer Exhibit Three. Claimant failed to get caught up on her documentation by the end of the day.

On July 15, 2015, the employer determined that claimant was not taking the documentation seriously and decided to terminate claimant. Employer Exhibit Four. The employer had taken extra steps to help claimant get her documentation done. After the June 30, 2015, warning, claimant was allowed to start her documentation earlier than other employees in an effort to help her complete it on time. Claimant was also given fewer individuals to document. Claimant was instructed to contact Ms. Russell if she continued to have trouble getting her documentation done. Claimant did not request any assistance from the employer to get her documentation done.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibits submitted by both parties. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

The employer has presented substantial and credible evidence that claimant failed to timely complete her documentation after having been warned. This is disqualifying misconduct. Claimant was given a written warning on June 30, 2015 for not timely completing her documentation over more than two weeks. Employer Exhibit One. Claimant was told to have her documentation completed prior to leaving for vacation, but claimant failed to comply. Employer Exhibit One. After receiving her written warning, claimant was able to catch up on her

documentation by the July 2, 2015 deadline. However, claimant immediately fell behind on her documentation again. Employer Exhibit Three. From July 2, 2015, through July 9, 2015, claimant again failed to timely complete her documentation. Employer Exhibit Three. Claimant's argument that the employer was short staffed and she did not have time to complete her documentation is not persuasive. When Ms. Russell spoke with claimant after her first written warning, it was arranged for claimant to start her documentation earlier than other employees. The employer also arranged for claimant to have fewer individuals to document. Claimant was also told to contact Ms. Russell if she had trouble getting her documentation completed. Despite all of these accommodations, claimant still failed to timely complete her documentation. Employer Exhibit Three. Claimant received her final written warning on July 14, 2015, and was told to complete all of her documentation by the end of that day. Employer Exhibit Three. Claimant failed to complete her documentation by the end of the day. Claimant's argument that she planned to have her documentation caught up by that Saturday is not persuasive. Claimant was aware that not completing her documentation on time put the employer's accreditation at risk and also may subject the employer to a fine. Furthermore, claimant did not request any help from Ms. Russell during July 2, 2015 through July 9, 2015, when she failed to complete her documentation timely.

Claimant's repeated failure to timely complete her documentation, a part of her job duties, after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. Benefits are denied.

**DECISION:**

The August 4, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs