

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

WILLIE DWEH
Claimant

APPEAL NO: 18A-UI-08409-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 07/15/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 2, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 29, 2018. The claimant participated in the hearing. Angie Reisdorf, Area Director and Jaimi Storm, Program Director, 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 direct support professional for REM Iowa Community Services from February 11, 2014 to July 12, 2018. He was discharged for failing to notify the employer about a missing client in a timely manner.

The employer serves adults with disabilities. One of the clients in the claimant's house suffered a brain injury and requires 24/7 care. He attends a day program from which he is expected home by 3:30 or 4:30 p.m. A private transportation company takes the client to the day program and picks him up.

On June 20, 2018, the client did not arrive home by 4:30 p.m. after attending the day program. The claimant did not take any action until 7:00 p.m. at which time he notified his supervisor the client had not returned. Under the employer's missing person protocol, the claimant should have notified his supervisor a client was missing 15 minutes after he was supposed to be home.

After the claimant informed his supervisor the client was missing, his supervisor called the police department which began a search that included approximately ten of the employer's staff members and the client's family. A neighbor stated that sometimes vacant apartments are left unlocked so the police searched those and found the client at 3:15 a.m. June 21, 2018. The transportation company dropped him off at the wrong apartment and failed to walk him to the

door. The employer placed the claimant on suspension June 22, 2018, while it conducted an investigation into the matter.

The employer interviewed the claimant and other staff members, the police officers involved, property managers, the client's family, and the transportation company employee involved. It concluded there was an error on the bus company's part as well as the claimant's part, because the bus company did not walk the client to the door and hand him over to his caretaker. The employer assessed the claimant with responsibility as well for failing to notify his supervisor 15 minutes after the latest time the client should have returned to the house. The employer believed that had the claimant notified it sooner the client would have been found sooner.

On July 12, 2018, the employer informed the claimant his employment was terminated for failing to follow the missing person protocol and notify the employer the client was missing 15 minutes after the latest time the client should have returned.

The claimant had not received any previous verbal or written warnings during his employment with REM Iowa Community Services.

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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 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).

It is bothersome that the claimant does not take responsibility for failing to notify the employer the client was missing June 20, 2018, and instead blames the employer. While the bus company made the initial mistake, the claimant perpetuated it by failing to inform the employer the client was gone or to follow the missing person protocol. That said, the employer waited 22 days before terminating the claimant's employment which takes the claimant's actions out of the realm of a current act of misconduct. Additionally, the claimant had not received any previous verbal or written warnings which make his actions on June 20, 2018, an isolated incident of misconduct. Consequently, the administrative law judge must conclude that the claimant's actions were not a current act of misconduct and was an isolated incident. Therefore, benefits must be allowed.

DECISION:

The August 2, 2018, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn