

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEANNIE A HORN
Claimant

APPEAL NO. 11A-UI-16382-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

**OC: 11/13/11
Claimant: Respondent (1)**

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated December 13, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 25, 2012. Claimant participated. Amy Fautsch was a witness for the claimant. The employer participated by Shannon Hagensten, coordinator; Sharon Loso, Accounts Receivable Supervisor; and Tami Meighan, Client Services Supervisor. The record consists of the testimony of Shanon Hagensten; the testimony of Tami Meighan; the testimony of Sharon Loso; the testimony of Jeannie Horn; the testimony of Amy Fautsch; and Employer's Exhibits 1-2.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a health care and education provider. The claimant was hired on September 21, 2011, as an accounts receivable clerk. She was a full-time employee. The employer did not feel that the claimant would be able to do this job and so she was transferred to the mental health center to work as a patient services assistant. The claimant's last day of work was November 15, 2011. She was terminated on November 15, 2011.

The claimant was terminated because the claimant did not perform the jobs to her employer's satisfaction and expectation. The claimant had difficulty remembering things and could not multi-task. She made errors in her work. The claimant was given very little training to do her job and needed more assistance than the employer was willing or able to give her. When she was assigned to the mental health clinic, there was a staffing shortage; the supervisor was on vacation and the fill in supervisor was not comfortable with the job; and the workload was overwhelming.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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 on such past act or acts. The termination of employment must be based on a current act.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. Kelly v. IDJS, 386 N.W.2d 552 (Iowa App. 1986).

The claimant was unable to complete her job duties due to lack of training from the employer, shortage of other staff, and poor supervision for a critical two-week period when the claimant's

supervisor went on vacation. The claimant did attempt to perform the job to the best of her ability but was unable to meet the employer's expectations. No intentional misconduct has been established, as is the employer's burden of proof. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated December 13, 2011, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css