

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUDY L DEAN
Claimant

AREA RESIDENTIAL CARE INC
Employer

APPEAL 16A-UI-04792-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/03/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 22, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from work for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on May 16, 2016. The claimant, Judy L. Dean, participated. The employer, Area Residential Care, Inc., participated through Chris Kolle, director of human resources; Susan Freeman, associate executive director; and Marcia Glanz, supervisor/individual program coordinator. Employer's Exhibits A through F were received and admitted into the record without 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, most recently as a community living home instructor, from July 26, 2012, until this employment ended on April 7, 2016, when she was discharged.

Claimant was discharged due to multiple disciplinary issues that occurred during her shift on April 4, 2016. Claimant failed to follow instructions when she had locked up medications that were not permitted to be locked up, as there was no rights restriction in place. She disrespected a client by making him move out of a recliner so she could sit down. She used her cell phone during work hours. Finally, claimant left clients unattended for approximately 20 minutes. Each of these issues on its own is a violation of the employer's work rules. (Exhibit B) Claimant received a copy of these work rules and signed off on them. (Exhibit B) During her testimony, claimant admitted to using her cell phone during work hours and to locking up the medications. She also admitted she asked a resident to move, but she claimed the circumstances were not what the employer described. At the time claimant was discharged, she was aware her job was in jeopardy and she could lose her job for further issues.

Claimant received a three-day suspension on March 23, 2016. (Exhibit C) Claimant was suspended for disrespecting a resident and failing to follow instructions in the performance of her job. (Exhibit D) Claimant was placed on disciplinary probation on January 12, 2016. (Exhibit D) The issues that led to claimant's disciplinary probation included claimant's personal cell phone use during work time, her failure to follow instructions, and her unprofessional conduct. (Exhibit F)

Claimant testified that she had resigned from her position on April 6, 2016, with an anticipated final work day of April 28, 2016. Claimant was overloaded by work, and she was tired of people criticizing her work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying job-related misconduct. Benefits are withheld.

It is the duty of the administrative law judge as 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 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. *Id.* 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 believable evidence; 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. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's witnesses more credible than claimant. While the employer did not present the residents of the home where claimant worked to provide sworn testimony or submit to cross-examination, the combination of the written documentation and Glanz's testimony, when compared to claimant's recollection of the event, establish the employer's evidence as credible.

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).

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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant violated numerous work rules after having been warned. This is disqualifying misconduct. Claimant's repeated failure to abide by the work rules 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 withheld.

DECISION:

The April 22, 2016, (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.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

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