

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHASITY A GILMOUR
Claimant

APPEAL NO: 18A-UI-06828-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOPE HAVEN AREA DEVELOPMENT CENT
Employer

OC: 05/27/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 14, 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 July 11, 2018. The claimant participated in the hearing. Cheryl Wright, Director of Human Resources; Tracy Heyveld, Program Coordinator; and Eva Castillo, Director of Employment Services; participated in the hearing on behalf of the employer. Employer's Exhibits Two, Three and Four, were admitted into evidence.

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 job coach for Hope Haven Area Development Center from August 2, 2012 to May 3, 2018. She was discharged for violating the employer's policy of leaving Enclave participants unsupervised.

On May 3, 2018, Program Coordinator Tracy Heyveld saw the claimant in her car at McDonalds. She could not tell if she had any of the Enclave participants with her. Ms. Heyveld observed the claimant at McDonalds between the hours of 9:30 a.m. and 1:30 p.m. Ms. Heyveld went to the home where the Enclave training was taking place and asked the director if the claimant took any clients with her when she left. The director did not know and could not verify the claimant's whereabouts. As Ms. Heyveld was leaving the office the claimant came to the door and Ms. Heyveld asked her if she had been to McDonalds. The claimant confirmed she had and indicated she took one of the four clients with her. She left three clients unsupervised when she went to McDonalds. While two of those clients can be left alone, the third has a guardian which makes him a dependent adult. Ms. Heyveld testified that the clients should not be left alone regardless of their guardian status (Employer's Exhibit Two). Another staff member reported there was no staff in the building when the claimant left to go to McDonalds (Employer's Exhibit Two).

On November 17, 2017, Ms. Heyveld received a call from the program director at 3:30 p.m. asking where the claimant was. Ms. Heyveld went to Enclave and the claimant was not there and the clients did not know where she went. Ms. Heyveld called the claimant from the building at 3:50 p.m. and the claimant stated she was outside the door and could not get in the building. Ms. Heyveld let her in and the claimant explained she was at the building next door as she went to get a soda. Ms. Heyveld told the claimant she could not leave the clients unattended and if she left to go to the building next door she needed to take the clients with her. The claimant stated she would never do it again. The claimant received and signed a written warning November 20, 2017.

The employer terminated the claimant's employment following the second incident of leaving the clients unattended May 3, 2018.

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.

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). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 duties and obligations to the employer. See 871 IAC 24.32(1).

Under the employer's policy, the claimant was not allowed to leave the Enclave clients unattended. Despite that policy, the claimant did so on two occasions. The first instance, which occurred in November 2017, the claimant went to get a soda and was reported talking to other staff, until she returned approximately 20 minutes later. The employer issued her a written warning and the claimant stated she would never do it again.

On May 3, 2018, the claimant left three clients alone while she took a fourth client to McDonalds. While the claimant's intentions of providing lunch to the client without anything to eat was understandable, she knew or should have known she could not leave the other three clients alone, even if two of them did not require constant supervision. One of those clients could never be left alone as he is a dependent adult, but the claimant was not supposed to leave anyone in the group unattended under the employer's policy.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The June 14, 2018, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn