

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DENISE E DENNIS
Claimant

OPTIMAE LIFESERVICES INC
Employer

APPEAL 16A-UI-10205-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/21/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 14, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on October 11, 2016. The claimant participated personally. The employer did not register a phone number with the Appeals Bureau to participate. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed part-time as a caregiver and was separated from employment on August 24, 2016, when she was discharged.

The employer serves a population of dependent adults, including client G, who is believed to have dementia. The claimant worked with G during the course of her employment, and had no prior relationship with G before either the claimant was employed or G began services with the employer. In August 2016, the claimant determined that G's family had been spending her money and was concerned. The claimant reported the concern to her manager, Barb Britton, and indicated that in response, she (the claimant) intended to become the client's payee, which meant she would have access and control over G's money, instead of G's family.

Ms. Britton informed the claimant at that time that she could not be G's payee, because of her employment with Optimae and because G was a client of Optimae. The claimant then learned that G intended to leave Optimae on September 16, 2016, and so on August 18, 2016, while clocked in, the claimant took G to the social security office to discuss what steps needed to be taken so she could become G's payee. When the employer learned of the visit to the social

security office, they confronted the claimant and discharged her. Prior to discharge, the claimant had received the employer's policies and procedures (administrative record), as well as had been issued a written warning in March 2016 (administrative record) after disclosing client information (about client G), on social media.

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 § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 NW2d 661 (Iowa 2000). Disqualification for a single

misconduct incident must be a deliberate violation or disregard of standards of behavior which employer has a right to expect. *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991).

A warning weighs heavily toward a finding of intentional conduct. Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985) Whether well intentioned or not, the undisputed evidence is that the employer made it clear by way of discussion with Ms. Britton and the claimant, where Ms. Britton warned the claimant that while employed for Optimae, the claimant could not be a payee for a client, including G. The administrative law judge recognizes that the claimant's scope of job duties included caregiver but that is not consistent with a financial advisor, counsel, or her payee. The claimant's actions are troubling; if the claimant suspected real financial abuse of G's account by her family, the claimant should have reported it to the employer or the appropriate authority for investigative purposes. Instead, the claimant blatantly disregarded the employer's directive and took the client, G, (while clocked in to work) to the social security office to initiate the process of becoming her payee. The undisputed evidence is on August 18, 2016, the claimant was still employed, and client G was still utilizing the employer's services, thereby directing violating Ms. Britton's directive.

The administrative law judge does not find the claimant's testimony that G was intending to leave the employer's services the following month, as persuasive or mitigation for the claimant's actions. Regardless of the prior written warning (where the claimant had violated confidentiality policies by posting about G on social media), the claimant knew or should have known that her purposeful steps of trying to become G's payee (while either she was employed for the employer, or G was using the employer's services) violated the reasonable policies and expectations the employer had the right to expect of its employee. Even in the absence of the employer's participation from the hearing, misconduct has been established. Benefits are denied.

DECISION:

The September 14, 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs