

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M POWELL
Claimant

APPEAL NO. 16A-UI-06476-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IMMANUEL
Employer

OC: 05/01/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Immanuel (employer) appealed a representative's May 25, 2016 (reference 01) decision that concluded Lisa Powell (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 27, 2016. The claimant participated personally. The employer was represented by Ted Valencia, Hearings Representative, and participated by Teresa Batten, Manager. Exhibit D-1 was received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 22, 2013, as a full-time in home services aid. The claimant signed for receipt of the employer's handbook. The employer issued the claimant a written warning on April 24, 2015, for not seeing a patient after the patient cancelled her appointment, not properly cleaning a residence for a participant with hoarding tendencies, and speaking to a participant's spouse about a time for returning for respite care when the nurse did not update the participant's chart with the correct return time. The employer notified the claimant that further infractions could result in termination from employment.

On January 7, 2016, the employer issued the claimant a written warning for not going to a participant's residence, taking longer routes to residences, asking for participants who lived further away, leaving and helping in another department, and visiting a participant outside of normal hours. The claimant made mistakes and missed some appointments. The employer's scheduling app did not accurately list the claimant's appointments and caused the claimant to miss some appointments. The claimant was unaware that the "back way" to the participant's homes might be longer. The claimant's co-workers did not want to travel to participants who lived 50 miles away. The claimant volunteered for those assignments. Once, the claimant was

unscheduled and volunteered to help another department on an outing. Her supervisor was not available so she notified the day center supervisor and the scheduler. The claimant had one participant who was an early riser. She drove to the participant's house early in the morning when the participant got up to help her dress.

The claimant spent two hours at a participant's house doing her expected activities. When her time elapsed, the participant's last load of clothes was in the dryer. The claimant reminded the participant about the clothes and said she had to leave. Some participants do not want the claimant to stay the entire allotted time or there is not enough work for the claimant to do. The claimant cannot stay and have a conversation with the participant because that is not in her job description. On April 11, 2016, the employer terminated the claimant for participant complaints. The claimant left clothes in a dryer on an unknown date and did not spend her entire time with a participant on an unknown date.

The claimant filed for unemployment insurance benefits with an effective date of May 1, 2016. The employer participated at the fact-finding interview on May 24, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 and (8) 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).

(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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's May 25, 2016 (reference 01) decision is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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