

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELUNDA F SANDERS
Claimant

REM IOWA COMMUNITY SERVICES INC
Employer

APPEAL 17A-UI-04749-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/02/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the April 28, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on May 23, 2017. Claimant participated. Employer participated through program director Angela Behrend. Employer's Exhibit 1 was received. Claimant's Exhibit A was received.

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 began working for employer on October 15, 2012. Claimant last worked as a part-time direct support professional. Claimant was separated from employment when she was terminated on March 23, 2017.

Employer has a policy allowing employees to physically restrain its clients under certain circumstances. Claimant was aware of the policy.

On January 31, 2017, claimant restrained a client living in the home where she worked. On February 2, 2017, another resident living in the home reported to employer that claimant improperly restrained the client. Employer opened an investigation. On February 3, 2017, employer interviewed claimant. On February 6, 2017, employer informed claimant she would be working in another home until the matter was resolved. Claimant was not available for work during the hours that were available in the other home, so claimant did not physically work for employer from that point forward. On February 7, 2017, employer completed its investigation and concluded claimant improperly restrained a client. Employer decided not to terminate claimant at this point because it was waiting for the results of an investigation from a third party. Employer received those results on March 1, 2017, but did not contact claimant.

By March 21, 2017, employer had not contacted claimant regarding her employment status. Claimant sent employer a letter by certified mail asking if she could return to work.

On March 23, 2017, employer terminated claimant's employment based on its February 7, 2017, finding that she improperly restrained a client.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Iowa Admin. Code r.871-24.32(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.

Inasmuch as the employer concluded its investigation on February 7, 2017, and knew about the results of the third party's investigation on March 1, 2017, but did not terminate claimant until March 23, 2017, only after claimant sent a letter by certified mail requesting an update on her employment status, employer has failed to show that it terminated claimant for a current act of misconduct. Because the claimant may not be disqualified for past acts of misconduct, benefits are allowed.

DECISION:

The April 28, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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