

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATIE A BRODIGAN
Claimant

IA DEPT OF HUMAN SVCS/GLENWOOD
Employer

APPEAL 15A-UI-09846-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/09/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 25, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination she was discharged for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on October 8, 2015. Claimant Katie Brodigan participated and was represented by Attorney Mike Tulis. Employer Iowa Department of Human Services/Glenwood participated through Treatment Program Administrator Richard Jones and was represented by Sandra Linsin of Employer's Edge, LLC. Claimant's Exhibits A through D were received. Employer's Exhibit 1 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: The claimant was employed full time as a resident treatment worker beginning September 22, 2008, and was separated from employment on August 10, 2015, when she was discharged. As part of her employment, the claimant was subject to background evaluations by the Iowa Department of Human Services (DHS) as required under Iowa Code § 218.13. As part of her job duties, the claimant provided treatment and medications to the employer's residents.

On June 1, 2015, the claimant left the campus for her lunch break during which she was arrested for possession of marijuana. The next day the claimant reported the arrest and criminal charges to her employer. She was suspended with pay pending investigation. Part of the investigation included waiting for the resolution of the criminal charges. The claimant pled guilty and was sentenced to six months unsupervised probation.

On July 29, 2015, the claimant completed documents which authorized DHS to conduct a background check. On August 4, 2015, the claimant received a letter from Treatment Program Administrator Richard Jones stating she was being suspended for her conduct for three days and she was scheduled to return to work on August 10, 2015. On that day, when she returned,

Jones notified her that DHS had determined she was no longer employable. That decision was based on “the nature, seriousness, and circumstances of the crimes/abuse in relation to the position sought or held[,] the time elapsed since the crimes/abuses, the number of crimes/abuses committed, the likelihood the individual will commit the crimes/abuses again, and the degree of rehabilitation.” (Employer’s Exhibit) The claimant was discharged.

Between the time she began her employment and the end of her employment, the claimant had one other criminal charge when she wrote a bad check in 2010. She immediately notified her supervisor. No background check was run at that time.

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. Benefits are denied.

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 of proof in establishing disqualifying job misconduct. *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). 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). 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).

Workers in the medical or dependent care profession, reasonably have a higher standard of care required in the performance of their job duties. That duty is evident by special licensing requirements. Additionally, employees working for the employer are subject to state-mandated background evaluations to remain qualified to work for the employer. The claimant's employment was denied based on two criminal proceedings in her background. These were the only changes to her background between her hire date and discharge. The claimant, who was entrusted with providing medications and other treatments for residents, was found in possession of an illegal substance and found guilty of theft in the fifth degree. The claimant has engaged in disqualifying misconduct which led her to be ineligible for continued employment. Accordingly, benefits are denied.

DECISION:

The August 25, 2015, (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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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