

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH K KUYRKENDALL
Claimant

APPEAL NO. 10A-UI-15188-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC
Employer

OC: 10-03-10
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 26, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 11, 2011. The claimant did participate. The employer did participate through (representative) Marcanne Lynch, Director of Human Resources; Ashleigh Dowell, Program Administrator; and LuAnn Wingfield, Vice-President of Operations. Employer's Exhibits 1 through 12b were entered and received into the record. Claimant's Exhibits 13 through 24b were entered and received into the record.

ISSUE:

Did the claimant voluntarily quit her employment without good cause attributable to the employer or was she discharged due to job 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 supported living technician part time beginning July 6, 2009 through October 8, 2010 when she voluntarily quit.

The claimant voluntarily quit when she was told that she was going to be demoted back to working in the group home she had worked in previously due to her poor job performance in her position in the Transaction Youth Program (TAY).

The claimant was hired to work in a group home setting where she and others supervised consumers. On November 12, 2009 the claimant was granted a transfer to the TAY program where she would assist consumers in their own homes. On September 26, 2010 the claimant was working with a resident who was not to be left alone. The claimant left early before the next staff person arrived leaving the resident unattended. Prior to leaving the claimant did not call the on-call supervisor to tell her that she needed to leave early. Leaving a client alone without even telling the on-call supervisor that she was doing so, was considered neglect of a consumer by the employer. The claimant had been previously accommodated when she wanted to regularly leave early, but it required the employer to obtain permission from the client's legal

guardian. The claimant was to work until 8:00 a.m. and indicated on her timecard that she had worked until 8:00 a.m. but according to another employee she left at closer to 6:10 a.m., went to another work location where she dropped off the keys to the medications, and remained at that location talking for 30 or 40 minutes. The claimant also falsified the Medicaid log indicating that she had provided services for the client until 8:00 a.m. when in fact she had not. The employer risks their Medicaid payment if they submit false documentation.

The claimant had been counseled on her attendance on July 27, 2010.

The claimant was to meet with her supervisor Ms. Dowell on September 29 to discuss the events. Prior to that happening the employer learned that the claimant had given another consumer a pocket knife that his guardian did not want him to have unless he was supervised as the consumer had a history of self injury. The claimant left the consumer alone with the knife and he left the residence with the knife in contravention of the guardian's wishes.

The meeting on September 29 never took place. On October 5, Ms. Dowell spoke to the claimant and told her that she had some job performance issues to discuss with the claimant after the staff meeting on October 6 at 3:00 p.m. On October 6 Ms. Lynch called the claimant to tell her that she did not need to come to the staff meeting but that she still needed to come in at 3:00 p.m. to meet with the supervisors. Ms. Lynch told the claimant that she was going to be demoted back to the group living home due to her performances issues, including leaving a consumer unsupervised and giving a knife to another consumer. The claimant refused to come in for the meeting and told the employer they could take it up with unemployment. The demotion would mean the claimant could be more closely supervised. Her hours would have changed as well as her pay being reduced by \$2.00 per hour. The only reason the claimant was being demoted was due to her own actions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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.

871 IAC 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.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(28) The claimant left after being reprimanded.

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 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

These principles apply also to disciplinary demotions, as was the case here. An employer may discharge or discipline an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation or discipline, employer incurs potential liability for unemployment insurance benefits related to that separation or discipline. Inasmuch as employer had previously warned claimant about the issues leading to the disciplinary demotion, and the claimant's actions did constitute a violation of the employer's procedures, the employer has met the burden of proof to establish that

claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. The demotion was warranted based on the claimant's misconduct.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The demotion was being made back to a job the claimant had previously performed. The claimant's decision to quit due to her disciplinary demotion was not good cause attributable to the employer for leaving the employment. Benefits are denied.

DECISION:

The October 26, 2010, reference 02, decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css