

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

EMILY J JOHNSTON
Claimant

LUTHERAN SERVICES IN IOWA INC
Employer

APPEAL 17A-UI-06298-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/21/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 14, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 10, 2017. The claimant participated personally. The employer participated through Josh Pedretti, director. Claimant Exhibits A and B and Employer Exhibits 1 through 5 were received into evidence. 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 full-time as a FSRP (family, safety risk permanency) care coordinator and was separated from employment on May 8, 2017, when she was discharged for failure to complete her job duties and documentation (Employer Exhibit 1 and Exhibit 3).

The employer contracts with the State of Iowa to partner and provide services to families dealing with abuse/neglect, parenting plans, termination of parental rights and other court mandated care. The claimant personally was responsible for meeting with families, attending court proceedings and coordinating case plans. The cases range in complexity and require different levels of care and attention from the claimant. The claimant had approximately 12-13 cases on her load at the time of separation. The claimant and employer partnered to create the claimant a calendar of due dates for deadlines to submit documentation and reports, which are time sensitive. The claimant's documentation was essential for the partnering agency and court's administration of matters involving the family. The claimant was aware of the role of documentation and successfully completed her documentation and job duties in the past. The claimant was also trained on employer policies and rules, which included providing maintaining

up-to-date records (Employer Exhibit 4) and providing timely and sufficient documentation (Employer Exhibit 4 and 5).

The employer became aware that the claimant had fallen behind on her safety plans and case plans and on March 28, 2017, the employer met with the claimant to discuss that she had fallen behind on documentation and safety cases (Employer Exhibit 2). The claimant failed to update the reports as discussed (Employer Exhibit 2). The claimant's explanation was that she did not have time. In response, the employer reduced the claimant's case load to reduce her time with families, and to allow her to concentrate on catching up. The claimant had some flexibility in her schedule and could work remotely, but in light of the reduction of work, and the employer developing a day by day plan for the claimant, she did not make strides in her late documentation. During this period, the employer also scheduled several meetings with the claimant to touch base with her and she did not show up (Employer Exhibit 2). The employer was aware that the claimant was having family strains that were impacting her job performance. During the final two weeks of employment, the claimant was removed of all duties but to catch up on documentation. She was also issued a documented performance improvement plan (PIP) on May 1, 2017 (Employer Exhibit 2) and told all documentation must be caught up by 4:00 p.m. on May 5, 2017. The claimant was permitted to work overtime if needed.

Upon review of the claimant's work on May 5, 2017, it was determined that at least three of the claimant's monthly reports to the state agency were incomplete, as well as four or five daily contact logs. The employer also reported that in reviewing the claimant's actions during the final week, it determined several days she did not attempt to log on to various reports or systems to complete her job duties. She was subsequently discharged.

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).

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). In this case, the claimant had demonstrated an ability to perform her job duties, which required timely and sufficient documentation to be completed by the claimant, for courts and government agency use. The

claimant knew or should have known that the employer contracted its services with the state agency to provide critical support to families involved in the court system, and consequently, failure to provide required documentation could jeopardize care and the employer's contract.

Based on the evidence presented, the employer confronted the claimant in late March about her delinquent documentation. The claimant responded by stating she did not have enough time. As a result, the employer took immediate action to reduce the claimant's case load, to allow her more time to focus on the documentation and catch up. Then the employer attempted to set meetings and schedules for the claimant, who historically had flexibility in her scheduling and was permitted to work overtime as needed. The claimant still did not catch up her documentation even when she had only documentation to do and no family visits or other duties. The employer then placed the claimant on notice on May 1, 2017, (Employer Exhibit 2) that she had until May 5, 2017 at 4:00 p.m. to get caught up.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). Given the role of documentation for the clients served by the employer, and the courts' reliance on documentation when addressing families and case plans, the employer's request was not unduly burdensome or unreasonable. The claimant failed to provide any persuasive evidence to justify the non-completion of three monthly reports and four or five daily contact logs, as required. Further, the employer identified the claimant had failed to even log on to attempt to complete documentation during this period, reflecting a lack of effort or urgency, given that her job was in jeopardy. Based on the evidence presented, the claimant knew or should have known her conduct was contrary to the best interests of the employer and could result in her discharge. Therefore, the administrative law judge concludes the claimant's repeated failure to perform her job duties (specifically, documentation) after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. Benefits are denied.

DECISION:

The June 14, 2017, (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/scn