

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUDY PAULSEN

Claimant

APPEAL NO. 11A-UI-10979-W

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC

Employer

OC: 7/24/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated August 15, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. The following claims were consolidated due to common issues of fact and law: Judy Paulsen (11A-UI-10979), Belinda Sullivan (11A-UI-10978), Deniece Arterberry (11A-UI-10977), and Jewell Thomas (11A-UI-11795). After due notice, an in-person hearing was scheduled for and held on February 10, 2011. The hearing of Jewel Thomas was performed separately from the other three and was completed on February 10, 2011. The consolidated testimony of Paulsen, Sullivan, and Arterberry was continued until February 17, 2011 and completed by a telephone conference hearing. Claimants participated through attorney, Katie Ervin Carlson. Employer participated through attorney, Joe Laverty. Common Exhibits were entered for all four cases. Employer Exhibits 1-52 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 21, 2011. Claimant was discharged on July 21, 2011 by employer for alleged “blatant disregard of agency policy.” The claimant was blamed for a number of deficiencies in the documentation. Specifically, she was accused of making several significant medication errors. She was accused of not performing consistent controlled substance counts between shifts and failing to get individuals referred for medical treatment in a timely manner. The most prominent accusation against this claimant was her failure to arrange an appointment for an “Iowa Care” recipient.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct.

It is not within the scope of the undersigned administrative law judge to determine whether a termination is legal or just. The undersigned is charged with determining whether an employer has proven, by a preponderance of evidence, that an employee committed work-related misconduct. This is a high standard.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct. The employer's allegations at hearing were contrived, and, in many instances, confusing. The claimant provided credible responses to all of the specific allegations presented by the employer. The most prominent allegation against this claimant is that she was accused of failing to arrange medical treatment for an individual. This resulted in a fine for the facility by the Department of Inspections and Appeals. Claimant provided a very plausible, reasonable explanation for what occurred at least concerning her involvement. Claimant was essentially blamed for an unfortunate bureaucratic snafu. This bureaucratic mess did not amount to claimant misconduct under Iowa law as the requisite level of intent was not shown.

The evidence reflects that it is possible that the claimant made some errors in documenting medication delivery, although the exact errors which may have been made by Ms. Paulsen are not entirely clear in this record. To the extent medication documentation errors have been proven, it is found that these errors do not rise to the level of misconduct. The requisite level of intent or disregard for the employer's standards, has not been proven.

DECISION:

The decision of the representative dated August 15, 2011, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/css