

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN G SLYE
Claimant

THE EASTER SEAL SOCIETY OF IA INC
Employer

APPEAL 15A-UI-13017-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/01/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Steven Slye (claimant) filed an appeal from the November 23, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination The Easter Seal Society of IA, Inc. (employer) discharged him for failure to follow instructions in the performance of his job. The parties were properly notified about the hearing. A telephone hearing was held on December 14, 2015. The claimant participated on his own behalf. The employer participated through Human Resources Generalist Sara Hardy. Employer's Exhibits 1 through 6 were 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 beginning on March 24, 2008. In 2009, he was promoted to Director of Supported Community Living, and was separated from employment on October 23, 2015, when he was discharged.

On October 23, 2015, Executive Director Sherri Nielsen met with the claimant to issue him a warning regarding his performance. (Employer's Exhibit 1.) She specifically wanted to address his inability to meet reporting deadlines and his professionalism. During the meeting, she invited Becky Pospisal as a witness. Pospisal made notes regarding the rest of the meeting. (Employer's Exhibit 2). According to the notes, both the claimant and Nielsen were speaking in raised tones while discussing the issues outlined in Nielsen's disciplinary memorandum. By the end of the meeting, Nielsen and the claimant were speaking in average tones and Nielsen told the claimant if they had to have the conversation again, it would be the last time. Following the meeting, the claimant sent an email to Pospisal thanking her for her presence in the meeting.

After lunch that same day, Nielsen issued the claimant a memorandum terminating his employment. (Employer's Exhibit 4.) She cited insubordinate behavior during the meeting and "a marked lack of interest" in the concerns of his subordinates. She concludes stating, "Upon

reflection after our meeting it has become clear that you will not be able to meet our performance expectations.”

The claimant had previously received a warning related to his professionalism. On January 13, 2015, the claimant received a coaching from Nielsen regarding his conduct in a public place while he was on vacation. (Employer’s Exhibit 6.) There was an investigation conducted which caused the employer concerns with the claimant’s professionalism. He was put on notice that he represents the employer and needs to make sure his conduct is professional at all times.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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).

Iowa Admin. Code r. 871-24.32(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.

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.

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 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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

When the record is composed of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

The employer has failed to show that the claimant engaged in a current act of misconduct. The claimant denied he was insubordinate and the employer's witness was unable to articulate the specific insubordinate behavior as she was neither the decision maker nor a witness to the events that occurred. According to the termination notice, Nielsen made the decision to end the claimant's employment based on her subjective belief that he would be unable to meet her expectations in the future. She does not identify the specific conduct that occurred during or following the meeting which led her to that decision. Inasmuch as the employer had warned the claimant about the about his professionalism and lack of deadlines earlier that morning and

there were no incidents of alleged misconduct thereafter, it has not met the burden of proof to establish that claimant acted deliberately or negligently after the most recent warning. The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The November 23, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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