

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAYLOR F SCOTT
Claimant

APPEAL NO: 13A-UI-02419-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

INSIGHT PARTNERSHIP GROUP LLC
Employer

OC: 01/13/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated February 20, 2013, reference 01, that held the claimant was not discharged for misconduct on January 15, 2013, and benefits are allowed. A telephone hearing was held on March 27, 2013. The claimant did not participate. Norma Davis, Director of Community Services, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on May 1, 2012, and last worked for the employer as a full-time life skill specialist on January 15, 2013. The claimant supervised a group home with three residents who have disabilities. She was responsible for assisting their finances to see that the landlord-owner was paid the monthly rent, utilities got paid and a reconciliation of petty cash.

The employer counseled claimant in November 2012 about the landlord contemplating resident eviction for non-payment of rent. She had previously been warned in September about some medication errors. The employer had weekly performance review meetings and it counseled claimant about issues.

The employer discharged claimant on January 15, 2013 after it learned during a weekly review meeting how claimant had handled an incident two months before. There was no recent incident involving medication errors, rent or utility payment or finances. The employer learned after discharge about a financial reconciliation issue.

Claimant failed to respond to the hearing notice.

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on January 15, 2013. A recent act of misconduct must be present to deny UI benefits.

The most recent incident the employer relied upon for discharge is an incident that was self-disclosed by claimant during a review meeting that had occurred two months before. This is not a recent act of misconduct and no other recent incident was relied upon for termination. What the employer learned about a financial reconciliation was after the discharge.

DECISION:

The department decision dated February 20, 2013, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on January 15, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/tll