

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M BAIN

Claimant

APPEAL NO. 14A-UI-05586-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES

Employer

OC: 04/27/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed a representative's May 20, 2014, decision (reference 01) that concluded Dawn Bain (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 23, 2014. The claimant participated personally. The employer was represented by Alyce Smolsky, Employer Representative, and participated by Deborah Schillinger, Team Director; Jennifer Swindler, Clinical Director; and Phyllis Farrell, Unemployment Insurance Consultant.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 21, 2013, as a full-time volunteer coordinator and hospice aide. The claimant signed for receipt of the employer's handbook. The employer issued the claimant a written warning on November 21, 2013, for failure to follow instructions. The employer notified the claimant that further infractions could result in termination from employment.

The claimant attended a patient who normally had a shower before bedtime on Wednesdays. The patient was transferred to a different facility and was tired at bedtime. The family requested the patient have a whirlpool bath in the morning instead. The claimant heard about the request on April 30, 2014. The patient's request changed the claimant schedule so she would meet with the patient on Monday and Thursday mornings. The claimant talked to a family member, a nurse case manager, and the office manager to make sure the change would happen the first full week of May 2014. An immediate change of the schedule would be difficult. She was scheduled to be absent on Friday, May 2, 2014, to take a class and had moved all her patients to Thursday, May 1, 2014.

The claimant met with the team director on April 30, 2014, and the change was discussed. Everyone agreed the change would occur. The claimant thought the change would start the following week because of the scheduling issues an immediate change would cause. The team director thought the change would start immediately. The two did not mention the date of the change and both thought the other understood. On May 1, 2014, the employer terminated the claimant for not changing the schedule immediately and giving the patient a shower before bedtime on Wednesday, April 30, 2014.

The claimant filed for unemployment insurance benefits with an effective date of April 27, 2014. The employer participated personally at the fact-finding interview on May 19, 2014, by Phyllis Farrell.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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).

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). 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). The employer and claimant did not communicate effectively. The claimant's behavior was not intentional. She made arrangements and thought she was providing appropriate services. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 20, 2014. decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs