

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMEE L CHAL
Claimant

APPEAL NO. 13A-UI-12934-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC
LYNDA MCCALLEY
Employer

OC: 11/03/13
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Mainstream Living, Inc. filed a timely appeal from a representative's decision dated November 21, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on December 11, 2013. Claimant participated. The employer participated by Ms. Marcanne Lynch, Human Resource Manager; Ms. Elizabeth DeHaan, Program Coordinator; and Ms. Sarah Cochran, Assistant Team Lead. Employer's Exhibits A, B, C, D, E, F, G, H and I were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jamee Chal was employed by Mainstream Living, Inc. from June 4, 2012 until November 4, 2013 when she was discharged for violating a work directive. Ms. Chal was employed as a full-time supplemental living technician and was paid by the hour. Claimant reported to Sarah Cochran and Elizabeth DeHaan.

Ms. Chal was discharged on November 4, 2013 based upon the events that took place on the night of October 31/November 1, 2013. Mainstream Living, Inc. provides living skill support to adult individuals suffering from disabilities in group home settings. Supported living technicians are responsible for providing the required care, support and assistance to the disabled adults in the home where the techs are assigned to work.

On the night of October 31, 2013, a co-worker reported that Ms. Chal was sick and wanted to leave work but could not find a replacement. Ms. Cochran called the claimant in an effort to make preparations to allow Ms. Chal to leave the residential home unattended. Ms. Cochran

asked the claimant to check records that were at the facility or accessible from the home where Ms. Chal was working to determine which of the three residents had been classified as being able to be "home alone" without supervision. Arrangements had been made to take one of the residents to the resident's mother's home and Ms. Chal reported that the other two residents were authorized to be home alone. Based upon this information Ms. Cochran authorized Ms. Chal to leave work at 5:00 a.m. on the morning of November 1, prior to the normal conclusion of her work shift.

As part of the authorization process, Ms. Cochran specifically instructed Ms. Chal to leave two notes: one for the staff members who would be coming on duty the following morning explaining where keys, etc. had been left and the second note was to be left for the remaining residents explaining why no supplemental living technician was on duty when they awoke and providing contact information in the event the residents needed assistance.

Subsequently, it was determined that one of the individuals that Ms. Chal stated was authorized to have time alone was not authorized to be home alone because of the propensity for the claimant not to cook in an unsafe manner causing a fire hazard. It was also determined that Ms. Chal had not left two notes as specified, but had only left one note for the next morning's staff to explain where keys had been left, etc. and no note of explanation had been left for the clients at the location. The employer also determined that at least one of the two remaining clients at the location had become upset and scared because there was no staff member present when she awoke to assist her and the resident did not know why the support living technician was not present. The employer concluded the claimant's actions left the clients at risk, that the claimant had not provided accurate information about the time alone status, and that the claimant had not followed specific instructions to leave two notes: one for the staff and one for the residents.

Because the claimant had been trained and had demonstrated the ability to do her job in the past and had received warnings and had been placed on probation for issues regarding consumer supervision, a decision was made to terminate Ms. Chal from her employment. At the time of the discharge meeting, Ms. Chal did not indicate any extenuating circumstances other than her illness that night.

It is the claimant's position that she was not asked about the "time alone" status of any residents by Ms. Cochran and that the claimant believed that Ms. Cochran had that information available to her from Ms. Cochran's home location during the early morning hours. It is claimant's further position that she had left two notes as instructed, but that issue had been falsely reported by a worker whose intent was to cause Ms. Chal to be discharged.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the evidence in the record establishes that Ms. Chal was given reasonable and work-related directives by Sarah Cochran, the assistant team leader in response to Ms. Chal's request to leave work early during her overnight shift on October 31/November 1, 2013. Because Ms. Cochran was not at the employer's offices during the early morning hours, she requested information from Ms. Chal about the "time alone" status of one of the three residents at the facility that night. Although that information was available to Ms. Chal and she had the ability to obtain it, Ms. Chal indicated that there was no issue with time alone for that resident. (The other two residents were not issues as one was authorized to be home alone and the other was going to spend the night at her mother's). The claimant was also issued the reasonable work-related directive to leave two notes so that staff would be aware of what had transpired and that clients separately would be informed as to why there was not a support tech present. Information would be available to them regarding alternate contacts if needed. Ms. Chal did not supply accurate information about the time alone status about the resident and left only one of the two required notes. This conduct jeopardized the resident who could not be left alone and caused the resident to be fearful and upset when she awoke the next morning to find no one present and no explanation. Based upon the previous warnings that had been served on Ms. Chal regarding her level of consumer supervision, Ms. Chal knew or should have known that the information provided to the team lead was inaccurate and the information left for the residents was incomplete.

Although the administrative law judge is cognizant that Ms. Chal maintains a different scenario of events, the administrative law judge notes that the claimant did not dispute the facts of her separation at the time she met with Ms. DeHaan although she had the opportunity to do so prior to her discharge from employment. For the reasons stated herein, the administrative law judge concludes the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter of whether there has been an overpayment and the amount of the overpayment to the Claims Division for determination. The claimant is responsible for repaying any overpayment in benefits. The employer is not liable for the overpayment in benefits as the employer did participate in the fact-finding interview in this matter.

DECISION:

The representative's decision dated November 21, 2013, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether there has been an overpayment and the amount of the overpayment is remanded to the Claims Division for determination. Claimant is responsible for any overpayment as the employer participated in the fact-finding of this matter.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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