

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDY A MOURLAM
Claimant

APPEAL 21A-UI-00454-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS-AREA & COUN
Employer

OC: 08/23/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On November 21, 2020, Brandy A. Mourlam (claimant) filed an appeal from the November 16, 2020, reference 01, unemployment insurance decision that denied benefits based upon the determination Iowa Dept. of Human Services-Area & County (employer) discharged her for violation of a known company rule. The parties were properly notified about the hearing held by telephone on February 8, 2021. The claimant participated, and she was represented by Stuart L. Higgins, Attorney. The employer participated through Trisha Goen, Social Work Administrator for Des Moines Service Area, and they were represented by Kii Elliot, Hearing Representative from ADP. The Employer's Exhibits 1 and 2 were received into the record without objection.

ISSUE:

Did the employer discharge the claimant for 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 as a Social Worker 2, and later a Social Worker 3, beginning on September 16, 2016, and was separated from employment on August 26, 2020, when she was discharged. The employer has policies stating poor work is unacceptable and forbidding falsification of documents. As a social worker for the employer, the claimant is expected to assess and protect children in need of assistance.

The employer has a progressive disciplinary policy. In May 2020, the claimant left a baby in an unsafe situation while she attended a personal appointment. As a result, on May 28, the employer suspended the claimant for five days and placed her on a final written warning. She was told any further violations of the employer's policies could result in the end of her employment.

On July 17, the claimant was assigned a new case. She reviewed the history and discovered the child's relative had a founded child abuse case from seven years prior. On July 22, the claimant was completing her paperwork to be submitted to district court regarding temporary

placement of child. She swore in her affidavit that the relative did not have any "Confirmed or Founded child abuse reports in the State of Iowa." Exhibit 2.

On July 30, Karli Mays, Assistant Polk County Attorney, contacted the claimant while she was on medical leave to discuss the situation. Mays then contacted the claimant's supervisor who reviewed the situation. When the claimant returned from medical leave, she was interviewed and suspended. The claimant acknowledged she knew about the founded child abuse case. The employer continued its investigation and discharged her on August 26 for violation of its policies.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 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 the 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer has met the burden of proof to establish that the claimant engaged in negligence to such a degree of recurrence that it indicated a substantial disregard of the employer's interests or a disregard of her duties and obligations to the employer. The employer has an interest in being able to trust the claimant, and all employees in her position, to make decisions and provide information needed to protect children in the state of Iowa. In May, the employer stressed to the claimant the importance of that interest by placing her on a final written warning when she made a poor decision and left a baby in an unsafe situation. The claimant was negligent while performing her job when she provided false information on an affidavit filed with district court. However, that final incident of negligence, along with her prior negligence and the final warning, indicates a substantial disregard of the employer's interests and her duties and obligations to the employer. Benefits are denied.

DECISION:

The November 16, 2020, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Stephanie R. Callahan
Administrative Law Judge

February 22, 2021
Decision Dated and Mailed

src/scn