

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ELIZABETH A NELSON**  
Claimant

**OPTIMAE LIFESERVICES INC**  
Employer

**APPEAL 16A-UI-09810-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/14/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Elizabeth A. Nelson filed an appeal from the September 1, 2016, (reference 02) unemployment insurance decision that denied benefits based upon the determination Optimae Lifeservices, inc. (employer) discharged her for failure to perform satisfactory work even though she was capable of performing satisfactory work. The parties were properly notified about the hearing. A telephone hearing began on September 26, 2016 and, due to statewide phone issues, it concluded on September 28, 2016. The claimant participated personally. The employer participated through Program Director Barb Grauer. Employer's Exhibits 1 through 7 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 as a Community Support Staff beginning on June 11, 2013, and was separated from employment on August 17, 2016, when she was discharged. The claimant worked with clients that lived at the employer's different sites as well as the employer's clients that lived in the community.

The claimant was required to complete paperwork, specifically contact notes, for each individual to whom she provided services. The employer needs the contact notes to know which services to bill for each client and it completes its billing on a weekly basis. If the employer cannot bill for services rendered, it cannot get paid for the services provided. The claimant was told at hire that the expectation was that all timesheets and contact notes would be submitted no later than the following day at 10:00 a.m. either in person or in the drop box provided at the employer's location.

On June 30, 2015, the claimant received an Employee Performance Review. (Employer's Exhibit 7.) On the review, her supervisor noted that the claimant's paperwork needed to be completed daily and turned in the next day. On October 8, 2015, the claimant received a

written warning for two weeks' worth of untimely filed paperwork. (Employer's Exhibit 5.) The claimant stated she agreed with the incident as described. She was reminded that paperwork needed to be completed daily and turned in the following day. On November 18, 2015, the claimant received another written warning as she had not timely submitted her paperwork for two days. (Employer's Exhibit 4.) She was again reminded that timesheets and contact notes were to be submitted by 10:00 a.m. the following day.

On June 24, 2016, the claimant received an Employee Performance Review. (Employer's Exhibit 3.) The claimant's development plan again included a need to timely submit her paperwork. On July 20, 2016, the claimant was placed on a three-day suspension without pay. (Employer's Exhibit 2.) On July 19, 2016, the claimant had not submitted her paperwork since July 6, 2016. She was told at that time "[f]urther disregard to timely paperwork procedures will result in termination." (Employer's Exhibit 2.) The claimant told the employer at that time she was dyslexic which caused some of her issues with completing the paperwork. Program Director Barb Grauer scheduled a meeting with the claimant for July 26, 2016 so she could come in and use the computer to assist her. The claimant did not show up for the meeting.

On August 15, 2016, the claimant submitted her paperwork for services rendered on August 5, 6, and 10. She had not yet submitted her paperwork for services rendered on August 12 and 13. (Employer's Exhibit 1.) The claimant had worked a double shift on August 13, 2016 and was too tired to complete her paperwork during the overnight shift on which she was expected to remain awake. On August 17, 2016, Grauer made the decision to discharge the claimant due to her continued issues with submitting timely paperwork.

#### **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 based upon wages credited from this employer's account are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa regulations define misconduct:

"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.

Iowa Admin. Code r. 871-24.32(1)a. 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 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995).

The employer has presented substantial and credible evidence that the claimant continued to have delays in submitting her paperwork after having been warned. Her repeated failure to submit timely paperwork after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. Accordingly, benefits are denied.

**DECISION:**

The September 1, 2016, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits based upon wages credited from this employer's account 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.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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