

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALD D MORGAN
Claimant

APPEAL NO. 13A-UI-03865-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HANDICAPPED DEVELOPMENT CENTER
Employer

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

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

STATEMENT OF THE CASE:

Handicapped Development Center filed a timely appeal from a representative's decision dated March 21, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on May 6, 2013. The claimant participated. The employer participated by Ms. Courtney Brankovic, Program Director; Brian Dykstra, Manager/Supervisor; Diane Hamm, Assistant Program Administrator and Patty Herkelman, Parent of a Resident. Employer's Exhibits A, B, C, D, E, F, G and H 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: Gerald Morgan was employed by the Handicapped Development Center from August 19, 2010 until February 28, 2013 when he was discharged from employment. Mr. Morgan worked as a full-time residential counselor and was paid by the hour. His immediate supervisor was Mr. Brian Dykstra.

Mr. Morgan was discharged when the employer concluded that he had falsified a mileage claim for work-related travel on January 28, 2013, stating that he was claiming the mileage for use of his personal vehicle for company business.

On or about February 27, 2013 the parent of a participant in the program contacted a case manager about a different issue. During the conversation the caller, Ms. Herkelman, in a hesitating manner then disclosed her concerns about whether Mr. Morgan had previously falsified a claim for mileage on a January 28, 2013 trip. The caller indicated that Mr. Morgan had taken odometer readings stating that he planned to submit the mileage that Ms. Herkelman

had traveled in her personal van as mileage that Mr. Morgan had traveled in his vehicle for reimbursement.

Because of the call, company management reviewed the claimant's mileage reimbursement document for the trip and found that the caller's information regarding mileage and the stops to be accurate with the exception that Mr. Morgan had claimed that the trip had been taken in his own vehicle and not in the program participant's family's vehicle. Because the claimant was on a final disciplinary action at the time and had received a number of other warnings from the employer for policy violations, a decision was made to terminate Mr. Morgan from his employment.

The parties met on February 28, 2013 and the claimant was informed of the allegations against him. Mr. Morgan did not dispute the employer's allegations by using the comments section on the discharge document that was prepared for him.

It is Mr. Morgan's position that his mileage claim for the January 28, 2013 trip was accurate and that his own personal vehicle was used. It is the claimant's further position that the allegation made by the participant's mother was untrue and motivated solely by anger on the part of the participant's mother because a personal friendship between them had deteriorated. To form a personal relationship with participants or family is prohibited by the Handicapped Development Center's policies.

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. 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 case the evidence in the record establishes that Mr. Morgan had been warned and counseled by his employer on a number of occasions for policy violations. At the time of the most recent incident, the claimant was on a final warning that had been issued to him on January 8, 2013 that suspended the claimant for two days for serious violation of the Handicapped Development Center policies. Claimant was aware any further violations of policy could result in his termination from employment.

Although the administrative law judge is aware that Mr. Morgan denies any wrong doing and maintains that the reimbursement request that he submitted was for the use of his own vehicle during the January 28, 2013 trip, the administrative law judge finds the claimant's testimony to strain credibility. The independent witness who had initially brought the matter to the attention of the employer testified at the hearing in this matter. Ms. Herkelman testified with specificity regarding the mileage, the locations and the specific request made by Mr. Morgan that Ms. Herkelman's odometer be used to record the mileage so that Mr. Morgan could later claim it as his own. Other witnesses denied that Ms. Herkelman had a propensity for making false claims and further testified that Ms. Herkelman had reluctantly initially provided the information to the employer about Mr. Morgan's activities. Based upon these factors, the administrative law judge finds the evidence to be in support of the employer and concludes that the employer has sustained its burden of proof in establishing disqualifying misconduct on the part of the claimant. Mr. Morgan knew or should have known that filing a false mileage reimbursement claim was contrary to the employer's interest and could jeopardize his employment. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual,

benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated March 21, 2013, reference 01, is reversed. Claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant is to repay unemployment insurance benefits is remanded to the Claims division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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