

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YVETTE LAFRATTE
Claimant

APPEAL NO: 16A-UI-12276-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOME CHOICE LLC
Employer

**OC: 10/16/16
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 3, 2016, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 2, 2016. The claimant participated in the hearing. Koleene Herlocker, Executive Director and Evan Herlocker, Director of Client Services, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time caregiver for Home Choice from March 24, 2015 to October 13, 2016. She was discharged for violating the employer's policy regarding contacting clients directly rather than through the office.

The claimant was on vacation from October 4 through October 11, 2016. While she was gone, her main client cancelled his services with the employer. When the claimant returned from vacation October 12, 2016, the employer notified her it would schedule her again when it had more hours for her. Shortly after that conversation, the daughter of the client who cancelled called to complain the claimant was harassing her through text messages and phone calls. She told the client's daughter, "So I guess I'm not working for your parents anymore" during one contact. The client's daughter was also upset because she hired the claimant's husband to perform construction work for her and was dissatisfied with his services. Contacting a client using the caregiver's personal phone, giving the caregiver's personal phone number to a client, and setting a client or his family up with the caregiver's husband in order for him to perform work for the client's family member violates the employer's policies.

Employees are only to speak to clients or family members through the office regardless of the reason for the contact. The employer verbally warned the claimant May 26, 2016, after she called the office to tell the employer the client contacted her directly to change the time of her shift. The employer asked the claimant how the client was able to contact her directly as that was against company policy and the claimant admitted she gave the client her phone number. The employer reviewed company policy with the claimant and explained the policy was in effect for the protection of both the client and the caregiver and the claimant agreed she would not do so in the future.

On July 14, 2016, the claimant received a written warning after another client called the employer and complained about the claimant contacting the client outside of office hours to make changes to her schedule. The employer reviewed the policy with the claimant again and reminded her she received a verbal warning for the same issue previously. The claimant refused to sign the warning and the employer stated it was a final written warning.

After the employer received the second call from the client's daughter in October 2016 and reviewed the claimant's previous warnings, the employer terminated her employment October 13, 2016, for violating its policies regarding contacting clients on her personal phone.

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.

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was warned against giving her phone number to clients or their family members or contacting clients on her own without going through the office but despite those warnings and the employer's policies prohibiting that conduct the claimant persisted in both giving out her number and contacting clients, often outside of business hours, without going through the employer. Whether the claimant agreed or disagreed with the policy she had a responsibility to follow it and she did not provide a good cause reason for failing to do so. It was inappropriate for her to contact the client's daughter after they asked that she no longer provide care for her father and it was inappropriate for her to suggest her husband as a contractor for work the client's daughter wanted done in the home.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The November 3, 2016, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs

