

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SARA A SCHOLTEN
Claimant

REM IOWA COMMUNITY SERVICES INC
Employer

APPEAL NO. 21A-UI-08443-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 24, 2021, reference 04, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 28, 2021. Claimant participated personally. Employer participated by hearing representative Jackie Boudreaux and witness Shannon Oechsner and Tobi Redman.

ISSUE:

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 12, 2021. Employer discharged claimant on January 12, 2021 because claimant had confirmed allegations of inappropriate actions against a handicapped individual after an investigation by DHS.

Claimant worked as a program supervisor for employer overseeing a house where four mentally or emotionally disabled clients lived. One of the clients was particularly difficult for claimant to deal with. Claimant had multiple verbal conversations with employer about inappropriate contacts and interactions with this client.

This client was being discharged on November 25, 2021 to go back home with his family. On that date, a coworker approached the house where claimant was working and the client lived. The coworker saw claimant backing the much larger client against the wall with her hand in his face yelling, "There's the fucking door! You can get the fuck out!" This incident was reported to authorities and the investigation was launched that found the allegations of inappropriate actions confirmed.

Claimant stated that she had ongoing difficulty with this client. She indicated that this difficulty was exacerbated through the large number of hours she had to work at the house and because of the lack of training she received. She stated she was sexually assaulted by the client and that her complaints were not heard by employer.

Employer listed the multiple trainings claimant had to complete prior to beginning work with the developmentally disabled individuals. Employer stated claimant never worked near the hours she'd stated and further stated that no other employees had brought forth complaints of the type claimant brought concerning the client in question. Employer further stated claimant never brought forward a complaint of sexual assault.

On November 24, 2020, claimant stated she had great difficulties with the client and called the police. The police did not charge client with a crime. On November 25 claimant said that the client was turning off and on a light switch. This additional frustration and the client's unwillingness to do what was told caused the claimant to calmly scold the client. Claimant additionally stated that the coworker's testimony was a lie that was told because the coworker didn't like claimant.

REASONING AND CONCLUSIONS OF LAW:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer

has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

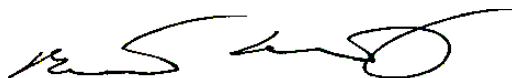
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id. In this matter, claimant's testimony concerning the incident that led to her termination was not credible. Claimant's statement that her coworker invented the incident because she didn't like the claimant was not credible as it was not supported by any additional testimony and denied by the witness.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning physically and verbally assaulting a developmentally disabled client. Claimant was warned concerning her interactions with this client.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew that her interaction was not appropriate, and further knew this client was leaving on the day in question. Her inability to control her anger when dealing with a difficult client led to the inappropriate actions. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated March 24, 2021, reference 04, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

June 11, 2021
Decision Dated and Mailed

bab/scn