

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH R SEITZ

Claimant

APPEAL NO: 13A-UI-08470-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND HOME CARE INC

Employer

OC: 06/16/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Joseph R. Seitz (employer) appealed a representative's July 8, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Heartland Home Care, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 27, 2013. The claimant participated in the hearing. Tara Hall, Attorney at Law, appeared on the employer's behalf and presented testimony from two witnesses, Mary Blosser and Tracey Bettis. During the hearing, Employer's Exhibits One, Two, Three, Five, Nine, Ten, and Fifteen, and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on June 4, 2012. He worked part time as a licensed practical nurse (LPN)/direct care provider. His last day of work was June 18, 2013. The employer discharged him on June 20, 2013. The stated reason for the discharge was insubordination by reporting to work against medical advice and without a release as able to return to work, as well as communicating directly with a client's family member outside of work after a prior warning against this.

On June 17 the claimant verbally reported to Bettis, the register nurse/case manager, that he had seen his doctor and that he had a respiratory staph infection; he further reported that the doctor had told him not to work for five days. The claimant had been scheduled to report work on June 18 at 7:30 a.m. at the home of a client. The client was a child with a severely

compromised immune system. Bettis acknowledged that the claimant should not go to the client for the shift on June 18. Later that day the claimant had direct communications with the client's mother, who indicated that she had made plans to be gone from the home for an appointment on the morning of June 18 and needed the claimant to go ahead and come. While the client's mother might have initiated the communication, the claimant did not advise the client's mother that he could not have the direct communications with her. The claimant had previously been warned against direct communication with clients' family members outside of work.

The claimant reported to Bettis that the client's mother had told him that she did not mind if he came even though he was sick as long as he wore a face mask. Bettis told the claimant that this would be acceptable as long as the claimant's doctor would sign off on allowing him to work so long as he wore a face mask.

On the evening of June 17 the parties' versions vary as to the communications. The claimant indicates that he had communicated to Bettis that his doctor would not agree to release him as able to work as long as he wore a face mask, and that she later told him that he would still need to go to the client and wear a face mask. Bettis testified that she did not instruct him to go ahead to the client's home even without a doctor's note indicating that it would be permissible given the claimant's illness. The administrative law judge finds that Bettis' account is more consistent with the events that then transpired on the morning of June 18.

The claimant was unable to get a note from his doctor allowing him to work so long as he wore a face mask because the doctor determined to stand by his original work restriction. The claimant did report to the client's home at 7:30 a.m. By about 7:45 a.m. Bettis was already contacting him seeking confirmation that he had been allowed by his doctor to work so long as he had a face mask. The claimant was then occupied with an acute medical condition of the client, and told Bettis he could not respond at that time. It was not until about mid-morning when he confirmed to Bettis that he had not gotten a release as able to work with a face mask. When Bettis then told him he needed to leave the home, he indicated he could not as the mother had left for her appointment. The claimant did not leave until about 12:30 p.m.

As a result of this incident, the employer determined to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

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. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's reporting to work at the home of an immune-compromised client when he had been ordered off work by his doctor because of being sick, and when he had been instructed by the employer that he could only report for work wearing a face mask if his doctor released him as able to work under those conditions, as well as having direct communications with a family member off duty after being advised this was not permitted, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's July 8, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 20, 2013. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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