

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TALLYA S BROWN
Claimant

APPEAL NO. 12A-UI-11513-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN BAPTIST HOMES OF MIDWEST
Employer

**OC: 08/26/12
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the September 21, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on October 19, 2012 and continued on February 6, 2013. Claimant did not participate on October 19 (her attorney got a note about 40 minutes into the hearing that she was in the hospital) but was represented by Katie Naset, Attorney at Law. Employer participated on both dates through community administrator, Amy Spangler and independent living program director and supervisor, Peggy Stevens. Employer's Exhibits 1 through 11 were received. Claimant's Exhibit A (fax pages 2 – 13) was 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: Claimant was employed full time as a consumer support staff from January 12, 2012 and was separated from employment on August 9, 2012. Her last day of work was July 26, 2012. She was fired for alleged failure to turn in contact notes (proof of service provided to client "members") for clients seen on July 25 by July 26, 2012. Two clients were planning a party and claimant did not know how to split the time on individual client contact notes, which had been introduced at a staff meeting a week and a half earlier. Employees were told it would take about six months to become proficient. Claimant had no warnings about untimely contact notes since split system began. The first anniversary of her husband's funeral was on July 26. In spite of that and her personal illness, she called and left messages for supervisors with questions she had about the contact notes. One called back and could not answer her question and referred to her supervisor Jeff. She called him and he told her not to worry about it and bring the information to the office by noon. She arrived before noon and handed her other notes to receptionist Brianna. Jeff reviewed the remaining information and said, "Whoa, I see what you're talking about." Jeff said he did not know how to handle it either after spending a half hour on it. The employer was aware she was in the hospital July 27 and 28 and was excused from work until August 6, 2012. (Claimant's Exhibit A, pp. 2 - 4) The decision to discharge her was made on July 26 if she did

not complete the contact notes by July 30. All of these notes were the notes given to Brianna before her meeting with Jeff on July 26. The delay until the discharge was due to scheduling a termination meeting. Jeff did not participate in the hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 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). The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs

potential liability for unemployment insurance benefits related to that separation. Even had claimant not turned in the notes, since the decision to discharge was made because of an alleged missed deadline while claimant was off work by order of a medical professional, the employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The September 21, 2012 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/tll