

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MARIA L COLLINS
1424 E WALNUT APT 24
DES MOINES IA 50316

LINK ASSOCIATES
4301 NE 14TH ST
DES MOINES IA 50313

Appeal Number: 05A-UI-08312-JTT
OC: 09/05/04 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Link Associates filed a timely appeal from the August 11, 2005, reference 02, decision that allowed benefits. After due notice was issued, a hearing was commenced on August 29 and concluded on August 31, 2005. Program Director Jay Bruns represented the employer and presented additional testimony through Residential Supervisor Kevin Martinache, Vocational Administrator Sara Gulbrandsen, Assistant Program Director Valarie Carr, and Residential Supervisor Carolyn Dillard. Maria Collins participated on both August 29 and 31. On August 31, Maria Carson represented Ms. Collins. Exhibits One through Six were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Maria Collins was employed by Link Associates as a full-time residential counselor from January 12 until July 19, 2005, when Executive Director Linda Streit discharged her for engaging in "personal work or hobbies" without prior approval and for "insubordination, including willfully disobeying the directive of a supervisor." Program Director Jay Bruns carried out the actual discharge.

Ms. Collins had responsibilities at two of the employer's facilities. Ms. Collins would begin her shift at a residential care facility for mentally retarded individuals. Ms. Collins' duties at that location included assisting the residents in getting dressed, performing personal hygiene, and preparing breakfast. When Ms. Collins completed her duties at the residential care facility, she reported to a vocational work center where she assisted consumers with pre-vocational training or in paid work opportunities.

The final incident that prompted the discharge occurred on July 19, 2005. At approximately 9:45 a.m., Residential Supervisor Kevin Martinache was walking through Ms. Collins' work at the vocational work center and observed Ms. Collins reading a book. Ms. Collins looked up from her book and went back to reading the book. At the time Ms. Collins was reading her book, she was supposed to be assisting consumers with their work in performing piecework for contracts the employer had negotiated with other businesses. Even if the consumers had no contract work to fulfill, Ms. Collins was expected to initiate and involve the consumers in activities. Mr. Martinache reported Ms. Collins' behavior to Vocational Supervisor Sara Gulbrandsen, who in turn contacted Assistant Program Director Valarie Carr.

Ms. Collins had received prior warnings regarding neglect of her duties and failure to follow directives from her supervisors.

On May 2, Ms. Collins received a reprimand after the employer discovered a documentation book for a consumer at the bottom of a filing cabinet drawer. Ms. Collins was expected to document the consumer's daily activities for billing purposes. Ms. Collins had lost or misplaced the book for the consumer, but had not reported the loss to her supervisor. Ms. Collins did not document the consumer's activities for five or more days.

On May 12, Ms. Collins received a reprimand for two matters. Ms. Collins had utilized materials that belonged to a contract business for a non-contract activity. Specifically, Ms. Collins led the consumers under her supervision in making Mothers' Day cards with the material designated for use in a contract. Ms. Collins had used the materials without seeking permission. It is not clear that Ms. Collins fully understood she needed to obtain permission to use the materials or understood that the materials were designated solely for contract work.

The May 12 reprimand also addressed Ms. Collins showing up one hour late for a 3.5 hour training session. Ms. Collins had been late getting to the training session because a coworker at group home had called in sick and Ms. Collins decided she needed to stay at the group home until a replacement arrived. The employer disciplined Ms. Collins for failing to notify a supervisor about the need to stay at the group home. The employer concluded that Ms. Collins had prevented the employer from making arrangements that would have allowed Ms. Collins to arrive at the training session on time.

On June 14, Ms. Collins received a reprimand for failing to report for her shift or notify the employer of the need to be absent on May 30. Ms. Collins had assumed that since the vocational work center was closed for Memorial Day that she did not need to appear for work. Ms. Collins' work schedule at the group home had been posted for her review and indicated that she was to work on Memorial Day.

The June 14 reprimand also referenced Ms. Collins had been observed reading the newspaper or talking on the phone at times when she was supposed to be cleaning the group home. The reprimand also addressed Ms. Collins' failure to complete the cleaning duties on the checklist at the group home.

On July 1, Ms. Collins received a reprimand for exercising poor judgment and failing to follow the instructions of her immediate supervisor on June 10 and June 13. On June 10, Ms. Collins had returned a van to the group home immediately after dropping residents at the vocational center rather than following the instruction that she return the van later in her shift so that it would not interfere with her responsibilities at the vocational center. On the previous instance(s) in which Ms. Collins had transported consumers to the vocational center, she had immediately returned the van to the residential care facility.

On June 13, Ms. Collins left the group home without securing the residence. Before leaving the group home, Ms. Collins had contacted her supervisor to advise she was not able to set the security alarm. The supervisor instructed Ms. Collins to make certain that both entry doors were closed and locked. Ms. Collins failed to close and lock the rear entry door and a coworker later discovered the door was open.

On April 20, Ms. Collins acknowledged receipt of the Link Associates Job Description for Life Coach. The document included the following as a qualification for the position: "Associates Degree in Human Services or a related field, with a minimum of one (1) year related successful work experience preferred." Ms. Collins had not previously worked in the Human Services field. Ms. Collins' most recent employment had been as a cashier at a Maid-Rite. Ms. Collins did not understand, or was easily confused by, many aspects of her assigned duties and instructions the employer provided. Ms. Collins did not ask questions to obtain clarification.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Collins was discharged for misconduct in connection with her employment.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Since the claimant was discharged, 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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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. App. 1992).

The evidence in the record indicates that Ms. Collins lacked the requisite skills, education, work background, and maturity to perform the duties the employer hired her to perform. This fact was readily apparent to the administrative law judge during the appeal hearing and could not have escaped the employer at the time of hire. Ms. Collins testified that she was often confused by the employer's instructions. The administrative law judge participated with Ms. Collins in a lengthy hearing that spanned two sessions. With the benefit of that experience, the administrative law judge finds Ms. Collins' testimony that she was often confused credible. The record is clear that Ms. Collins neglected her duties on July 19 when she read a book instead of interacting with the consumers in her charge. However, the evidence regarding the prior alleged acts of misconduct is insufficient to establish that Ms. Collins had been intentionally negligent or careless in performing her duties or that she intentionally disregarded her supervisors' instructions. In short, the record fails to establish a pattern of carelessness or

negligence that rose to the level of misconduct sufficient to disqualify Ms. Collins for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Collins was discharged for no disqualifying reason and is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representative's decision dated August 11, 2005, reference 02, is affirmed. The claimant was discharged for no disqualifying reason and is eligible for benefits, provided she is otherwise eligible. The employer's account may be assessed for benefits paid to the claimant.

jt/kjw