

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

MAROLEE M MILLER
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MANILLA IA 51454

CARE INITIATIVES
C/O JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 04A-UI-11071-SWT
OC: 09/12/04 R: 01
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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 4, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 10, 2004. The parties were properly notified about the hearing. The claimant, Marolee Miller, participated in the hearing. Roxanne Bekaert participated in the hearing on behalf of the employer with witnesses, Amber Bau and Kelly Jimerson. Exhibits One through Six were admitted into evidence at the hearing.

FINDINGS OF FACT:

The employer is a nursing home facility with approximately 40 residents. Marolee Miller worked full time for the employer from May 22, 1996, to September 15, 2004. In October 2001, Miller began working as a care plan coordinator. Her job duties included assessing the needs of the residents on a quarterly basis using an assessment survey form called a minimum data set (MDS). She used the MDS to prepare a care plan that gave instructions to the staff on what care to provide each resident.

The State of Iowa periodically inspects the facility. State inspectors review the MDS and care plan for accuracy. They can issue citations for discrepancies in documentation.

Miller had not received any discipline regarding her job performance until July 16, 2004, and her annual job evaluations were good. On July 16, she received a verbal warning from her supervisor after the state inspectors found some minor discrepancies between information in a care plan and MDS. On August 27, Miller was informed that her work hours and duties were being changed to allow her to devote more effort to her care plan documentation. On September 9, Miller received a final written warning for working extra hours on September 4 and 5, without recording the extra time on her time card.

In mid-September 2004, state inspectors cited the facility after discovering that a resident had an entry in her care plan that her mental health should be monitored because she had a history of depression but no such information was noted in the MDS. Miller made the entry in the care plan because the resident in fact had a past history of depression. There was no corresponding entry in the MDS because during the survey period, the resident displayed no symptoms of depression. Miller was being cautious in providing extra information to assist staff in caring for the resident.

On September 15, 2004, the employer discharged Miller because she had repeated instances in which the care plans she prepared did not match the information provided in the MDS, despite warnings and modifications in her work schedule to prevent such errors.

Miller performed her work duties to the best of her ability, but there were occasions when information was not recorded to the employer's standards. She never deliberately failed to accurately complete the documentation required by her job.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Miller was discharged for work-connected misconduct as defined by the unemployment insurance law.

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, (8) provide:

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).

(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.

The employer has the burden to prove Miller was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging Miller, no current act of work-connected misconduct as defined by the unemployment insurance law has been established in this case. The final incident did not involve any willful and substantial wrongdoing by Miller. In fact, she was attempting to provide accurate information about a resident's past mental health history to help the staff properly care for the resident. She sincerely believed that the mental health history should not be recorded in the MDS because the resident did not show symptoms of depression during the assessment period. At most, a good faith error in judgment has been established, which does not meet the definition of work-connected misconduct under Iowa law.

DECISION:

The unemployment insurance decision dated October 4, 2004, reference 01, is affirmed. Marolee Miller is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/tjc