IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

TYMIA L THREATT Claimant **LUTHERAN SERVICES IN IOWA INC** Employer	**APPEAL 17A-UI-02026-H2T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/29/17** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 17, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 16, 2017. Claimant participated. Employer participated through (representative) Sara Crozier, Project Manager and Jennifer Decock, Family Safety Risk and Permanency Supervisor. Employer's Exhibit 1 was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected 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 care coordinator beginning in July 30, 2015 through February 2, 2017 when she was discharged. The claimant was discharged for two reasons, alleged falsification of documents and refusal to work weekends.

As a care coordinator the claimant met with clients and their families and would make 'contact' notes about what happened and what she learned during the meeting. She would type those contact notes into a computer program. The notes with other information would eventually be generated into a monthly form that would be mailed to the client and government agencies. Part of filling out the form to document contact included checking a box in a drop-down menu that would indicate the location of the meeting. Choices included: home, court, and community among others.

On December 15, the claimant was to meet with a client and their family. The mother of the client asked the claimant to join them at a local pizza place for dinner. The claimant agreed and did join them. Under the employer's policies it was perfectly acceptable for the claimant to meet with the family at the restaurant. The claimant made contact notes of the visit including that she had joined the family for dinner. She never specifically wrote in her notes that she was in the family's home. Whenever she made a visit the claimant was required to assess the whether

there were any safety concerns for the client. The claimant noted no safety concerns present during her December 15 visit. The only inaccuracy with the claimant's contact note was that when she picked a location for the meeting from the drop down box, she picked the "home" choice rather than the "community" choice. The claimant also indicated that she spent one hour with the family. She was there before they ordered dinner and there after they had finished eating dinner and were getting to-go boxes to take their leftover pizza home. Claimant's uncontroverted testimony was that it takes about forty-five minutes to get pizza once it is ordered from this particular restaurant.

Approximately one month later, an attorney who knew the client's Mother and was also in the restaurant on December 15, indicated to Ms. Decock that the claimant had only spent fifteen minutes with the family. The same attorney sent an e-mail on March 17, found in employer's Exhibit 1, indicating that the claimant had only been in the restaurant for fifteen minutes.

The client's mother received the report around January 9 and wanted some of the details of the contact information the claimant had written in the report changed. The client's mother was not upset about the location of the meeting or the time that the claimant indicated she spent in the meeting, rather she wanted the claimant to change other details. When the claimant refused the client's mother's request to change details, the client's mother threatened her and then complained to the employer that the claimant had falsified the report. The employer also refused to make the changes to the detail of the contact notes requested by the client's mother, but did question the claimant about the time she spent at the visit as well as the location of the visit. When questioned by the employer the claimant readily admitted the meeting had been at a restaurant and contended that she had been at the restaurant for at least an hour.
During this same time period the claimant was assigned a new client who wanted her to meet with him on weekends. All care coordinators are told when they are hired that some weekend work may be necessary depending upon the needs of the clients. Care coordinators are allowed to work with the clients to schedule around work and school needs of the clients. The claimant had already arranged to meet with the new client every other Friday beginning on February 3. The claimant did not want to work weekends, but was not refusing to do so if necessary.

The claimant was never asked or required to falsify documents by the employer or her supervisor. The claimant took over clients from a colleague who was promoted. Under government rules, the colleague was not allowed to sign the report as both supervisor and care coordinator. The new care coordinators were required to sign the reports. The reports were clear that the care coordinator who had just taken over the case was not the coordinator who had written the contact notes. The contact notes still made it clear that the prior care coordinator had conducted the meeting and written the notes.

Prior to her discharge the claimant had not been given any prior warnings indicating her job was in jeopardy.

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 § 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:
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> 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.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
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> (1) Definition.
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> 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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. There was simply no reason for the claimant to try and hide from the employer that she met with the family at a restaurant. The administrative law judge finds the claimant's explanation that she simply made a mistake and chose the home option instead of the community option on the drop down box. Additionally, the only person who was actually at the meeting who offered testimony at the hearing was the claimant. She was credible in her explanation that the meeting lasted at least

an hour. The claimant did not intentionally falsify the employer's records. The claimant did not refuse to work weekends. She was allowed to work with the client to find a week day time for the meeting and coordinated with the client and another government work to meet on Fridays. The employer had been given a copy of the e-mail showing her setting up the meeting with the new client.

The conduct for which claimant was discharged was merely an isolated incident of a wrong choice on a drop-down menu. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it 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. The claimant established that the client's mother had a reason to lie about the time the meeting lasted. The employer has not established job connected misconduct sufficient to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are allowed.

DECISION:

The February 17, 2017, (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs