

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACKIE L LOGHRY PIRNER
Claimant

APPEAL 19A-UI-07594-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BKD TWENTY ONE MANAGEMENT
COMPANY**
Employer

**OC: 08/18/19
Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment

STATEMENT OF THE CASE:

BKD Twenty One Management Company (employer) appealed a representative's September 17, 2019 decision (reference 01) that concluded Jackie Loghry Pirner (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 17, 2019. The claimant participated personally. The employer participated by Dawn Schroeder, District Director of Operations.

The employer offered and Exhibit 1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 1, 2015, as a full-time executive director. She received the employer's handbook when she was hired. The employer did not issue the claimant any written warnings during her employment.

In 2017, the employer asked the claimant to do a customer satisfaction survey of residents. The claimant had training for the survey and understood her staff could help residents complete the survey document. The employer planned another survey to be completed from June 1 to July 15, 2019. The corporation did not require the claimant or her subordinates to be trained on the issuance of the survey.

The employer did not ask her to sign for receipt of the FAQs regarding the administration of the survey. The claimant did not receive the General FAQs document for 2019. The General FAQs document stated, "Brookdale associates may explain the survey, review the survey instructions with residents, or help them get set up on a computer or tablet, but should not assist in the actual completion of the survey/responding to the survey questions, as it could influence the way the resident answers the questions."

In preparation for the 2019 survey, the claimant told her medicine technician to remind residents to complete the survey when she did her monthly customer satisfaction questions. The claimant told the subordinate to give the residents any help they needed in completing the survey. The claimant told the office manager to enter the surveys for the residents on line and keep the original paper copies. The claimant was proceeding as she had with the 2017 survey because she had not received the 2019 FAQs.

On June 20, 2019, the corporate office called the claimant and asked her questions about the survey entries. The claimant explained her process. The corporate representative told the claimant about the 2019 FAQ. The representative indicated that forty-five entries had been made from the claimant's location. The claimant told her subordinates to immediately follow the employer's 2019 procedure. On June 25, 2019, the corporate office representative called and spoke with the claimant again. On June 27, 2019, the employer closed its investigation into the claimant and survey entry.

On July 15, 2019, the 2019 survey closed and the claimant's location's scores were determined. The employer evaluated the location's scores. On August 7, 2019, the employer notified the district director of operations of the investigation and the scores. On August 15, 2019, the employer terminated the claimant for falsifying customer satisfaction scores.

The claimant filed for unemployment insurance benefits with an effective date of August 18, 2019. The employer provided the name and number of Dominique Alexander as the person who would participate in the fact-finding interview on September 13, 2019. The fact finder called Dominique Alexander but that person was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not identify the dates or submit the specific rule or policy that the claimant violated which caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(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.

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 employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on June 20, 2019. The employer was aware of the incident and spoke with the claimant on June 20, 2019. The claimant was not discharged until August 15, 2019. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's September 17, 2019, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs