

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDAL J BOBST
Claimant

APPEAL NO. 08A-UI-03061-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRANCIS LAUER YOUTH SERVICES INC
Employer

OC: 02/24/08 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Francis Lauer Youth Services, Inc. (employer) appealed a representative's March 19, 2008 decision (reference 01) that concluded Randal J. Bobst (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2008. The claimant participated in the hearing. Tracey Peet appeared on the employer's behalf. One other witness, Tina Cullinan, was available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 4, 2006. He worked full time as a counselor in the employer's service for children and families. His last day of work was February 26, 2008. The employer discharged him on that date. The reason asserted for the discharge was failing to follow through with contacting group members or families about session cancellations.

On January 28, 2008 the employer gave the claimant a written warning for failing to immediately implement a new billing unit program as discussed on January 16. On January 30 the employer expressed concerns to the claimant that he might not be a good fit with the employer since the employer's program had been restructured.

On February 25 the claimant had some family counseling sessions scheduled during the day and was scheduled for a life skills group session that evening. However, there was a winter storm that day, and the employer's offices closed at approximately noon. The claimant contacted the families with whom he had appointments and either spoke to the parents or left messages indicating the appointment was being cancelled. There was one parent, however,

who did not get the message from the claimant and who called in that afternoon to make sure the claimant was not coming to the appointment due to the weather. The claimant also contacted the members of the group for whom he had contact information to advise them of the cancellation of the group session. However, there were new members of the group for whom the claimant did not have contact information. When he contacted a staff member at the employer's shelter in the late afternoon to try to get the contact information, the staff member indicated that since the employer's office was closed, there was no one available who could access that information. As a result, two of the new members of the group did show up for the cancelled session.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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:

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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra.

The reason cited by the employer for discharging the claimant is his failure to successfully make contact with all persons affected by the cancellations on February 25, 2008. Under the circumstances of this case, the claimant’s failure was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative’s March 19, 2008 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css