

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JLYNN L SHOULTZ
Claimant

APPEAL NO. 14A-UI-12233-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 11/02/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated November 24, 2014, reference 01, which denied unemployment insurance benefits finding that the claimant was discharged from work on October 10, 2014 for conduct not in the best interest of the employer. After due notice was provided, a hearing was held in Davenport, Iowa, on April 22, 2015. The claimant participated. Although notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

The issue in this matter is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Jlynn Shultz was employed by Rem Iowa Community Services, Inc. from March 15, 2014 until September 16, 2014 when she was suspended from work. The claimant was subsequently discharged on October 10, 2014.

Ms. Shultz was employed as a full-time designated supervised program worker and was paid by the hour. Her immediate supervisors were Arthur Bell and Ms. Joline Baty.

On September 16, 2014, Ms. Shultz reported to work but was told by her supervisor that she should not go to the group living house where she was normally assigned. An individual who Ms. Shultz had provided care had alleged that Ms. Shultz had financially exploited him. Ms. Shultz immediately denied the allegation that she had taken advantage of the consumer financially, or in any other way. The claimant's supervisor then attempted to assign Ms. Shultz to a second group living home, however, Ms. Shultz declined because she had been "fondled" by a consumer at the second house location and had filed and turned in a complaint about the male consumer's activities at the second house location. The claimant was suspended from work at that time. Ms. Shultz heard nothing further from Rem Iowa for an extended period of time.

During the interim, the claimant had been questioned by an investigator from the Department of Health and Human Services and subsequently a finding had been made by DHS that the claimant was “misusing a client’s money.” Ms. Shoultz filed an appeal, maintaining that she had engaged in no misconduct and that she had not received any monetary benefits or gifts from the client. A decision on the claimant’s administrative appeal of the DHS decision had not been reached at the time of the unemployment insurance hearing in this matter.

Ms. Shoultz categorically denies accepting any gifts, or having the client purchase any items for her or her pets and believes that the complaint against her by the client was in the form of retaliation because the claimant had rejected the client’s personal advances towards her. Ms. Shoultz maintains that she had informed Rem Iowa in advance, of the possibility of complaints of this nature being made against her, because the consumer had done so to a number of other employees from Rem Iowa in the past.

The claimant denies any and all wrongdoing with respect to the consumer who alleged that she had engaged in financial improprieties. It is the claimant’s further position that she had good cause not to accept the assignment at the second group living home on September 16, 2014 because a male consumer at that location had repeatedly attempted to “fondle” her and she had previously reported this to Rem Iowa and directly to her supervisor prior to September 16, 2014.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

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).

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 the 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. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily be serious enough to warrant the denial of job insurance benefits. Such misconduct must be "substantial."

In the case at hand the claimant at all times denied allegations made by a male consumer that the claimant had taken financial advantage of the consumer by allowing him to purchase food for the claimant and her pet and further denied engaging in any improprieties while employed by Rem Iowa. At the time of hearing in this matter, a final resolution of a previous finding of the Department of Health and Human Services has not been reached by the Division of Inspections and Appeals.

On September 16, 2014, the claimant was not immediately discharged or suspended by Rem Iowa, although it appears that Rem Iowa was aware of the allegations that had been made against Ms. Shoultz. The employer instead attempted to send Ms. Shoultz to a second group home location where the employer was aware that Ms. Shoultz had filed a complaint about a resident who had attempted to fondle her in the past. When Ms. Shoultz was unwilling to take the assignment, for the above-stated reason, she was suspended and subsequently discharged. The administrative law judge concludes that the claimant has established good cause for refusing the assignment to the second group living home on September 16, 2014 and the claimant's refusal to accept an assignment at that house did not constitute misconduct in connection with her employment.

Because there is no evidence to the contrary, the administrative law judge concludes that the evidence in the record is not sufficient to establish disqualifying misconduct on the part of Ms. Shoultz. The claimant has at all times denied the allegations of financial wrongdoing with a consumer and a decision in her appeal with the Department of Inspections and Appeals has not yet been reached.

For the above-stated reason the administrative law judge concludes that the evidence in the record is insufficient to establish intentional disqualifying misconduct on the part of this claimant. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible. If additional facts later become available to establish the claimant has engaged in inappropriate financial exploitation of the client in question, the employer may request reconsideration from Iowa Workforce Development in this matter.

DECISION:

The representative's decision dated November 24, 2014, reference 01, is reversed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css