

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY MILLER
Claimant

APPEAL NO: 09A-UI-18178-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

OC: 11/01/09
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Kimberly Miller (claimant) appealed an unemployment insurance decision dated December 2, 2009, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Lutheran Services in Iowa, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 13, 2010. The claimant participated in the hearing. The employer participated through Lisa Roggemann, Human Resources Coordinator; Kevin Schulte, Program Supervisor; and Debra Swenson, Service Coordinator. 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:

The issue is whether the employer discharged the claimant for work-related misconduct?

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 employed as a full-time lead youth specialist in this residential treatment facility in Waverly, Iowa from May 22, 2001 through November 10, 2009. She was discharged for admitted theft of another employee's property while at work. The Waverly police contacted the claimant's supervisor on November 6, 2009 reporting that the claimant had been arrested for theft of a co-worker's bank debit card.

The bank contacted co-worker Alicia Huddleson on November 3, 2009 and advised her she had several overdraft charges resulting from the use of her debit card. Ms. Huddleson could not find her debit card and the bank advised her to contact the police, which she did. Ms. Huddleson spoke with Officer Long from the Waverly Police Department on November 5, 2009 and was advised there were six fraudulent transactions on her card, which added up to approximately \$300.00. The purchases were made at Wal-Mart Stores, Smart Styles, and Fareway. The police determined the claimant was responsible for the theft and the fraudulent charges. The claimant was arrested on November 6, 2009 and the police contacted her supervisor on that same date. The claimant's next scheduled work date was November 8, 2009 and she was

advised not to report to work. The employer discussed the matter with the claimant on November 9, 2009 and she admitted her theft. She was discharged effective November 10, 2009. The criminal case regarding this matter is currently pending.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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 employer has the burden to prove the claimant 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 claimant was discharged on November 10, 2009 for admitted theft of a co-worker's bank card. She acknowledges she stole the credit card but the claimant believes she is entitled to unemployment insurance benefits because she had been a good employee for eight years. While she may have been a good employee, she was discharged for an admitted act of theft, which is against the law. The claimant's theft shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as

defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated December 2, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css