

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J MILLER
Claimant

APPEAL NO. 13A-UI-00273-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRST RESOURCES CORP
Employer

OC: 12/09/12
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Barbara Miller filed a timely appeal from the January 9, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 7, 2013. Ms. Miller participated. Lorraine Uehling represented the employer and presented additional testimony through Lori Ledger.

ISSUE:

Whether Ms. Miller was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits. The administrative law judge concludes that Ms. Miller was discharged for misconduct in connection with the employment and is disqualified for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: First Resources Corporation is a social services agency that provides services to adults and children with intellectual and physical disabilities. Barbara Miller was employed as a full-time Program Coordinator from 1997 until December 10, 2012, when the employer discharged her for misappropriation, theft, of a disabled client's personal funds. Ms. Miller's duties included assisting clients with managing their finances and making decisions about use of their personal funds. Ms. Miller decided that a particular intellectually disabled client had more money than he needed. Ms. Miller used that client's money to purchase art supplies and other merchandise for her personal use. Ms. Miller used the client's money on multiple occasions to purchase things such as a bed for another client, state fair tickets for staff and other clients and staff, movie tickets for staff, and food and beverages for staff and other clients.

Ms. Miller's ongoing misappropriation of the disabled client's funds came to the employer's attention on December 3, 2012, during another employee's exit interview. The employer then conducted a thorough audit and additional investigation into Ms. Miller's handling of the client's funds. The investigation included interviewing Ms. Miller. During the interview, Ms. Miller made multiple intentionally dishonest statements. These included statements that the disabled client loved crafts, had an apartment filled with crafts, and that art supplies purchased with the client's

money were in the client's apartment. The employer interviewed the disabled client, who denied any interest in crafts and provided other information that refuted Ms. Miller's assertions. The employer searched the disabled client's apartment and found no art supplies and no crafts.

Ms. Miller was fully aware of the employer's policies prohibiting use of client's funds to fund staff participation in activities. Ms. Miller shared responsibility for enforcing those policies. Ms. Miller was fully aware that the employer had a voucher request protocol and a reimbursement protocol to fund staff participation. Ms. Miller was fully aware that she was not authorized to use one client's money to fund another client's needs or wants. She was specifically aware that the employer held fundraisers to pay for furniture items when a client lacked resources to purchase such items. Ms. Miller was fully aware that she was prohibited from converting the client's funds to her own personal use.

REASONING AND CONCLUSIONS OF LAW:

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.

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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

The evidence in the record establishes that Ms. Miller engaged in an ongoing pattern of intentional misappropriation, theft, of a disabled client's money. The evidence further indicates that Ms. Miller was intentionally dishonest with the employer during the employer's investigation of the matter. Ms. Miller's conduct was in willful and wanton disregard of the disabled client and of the employer interests. Because Ms. Miller was discharged for misconduct, she is disqualified for benefits 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. The employer's account shall not be charged for benefits paid to Ms. Miller.

DECISION:

The Agency representative's January 9, 2013, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs