

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINA E COOK-RABE
Claimant

ABCM CORPORATION
Employer

APPEAL NO: 12A-UI-10307-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/01/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated August 17, 2012, reference 05, that held she was discharged for misconduct on July 19, 2012, and benefits are denied. A telephone hearing was held on September 18, 2012. The claimant participated. Tracy Quinones, HR representative, and Karla Mahler, Administrator, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time C.N.A. on August 23, 2005, and last worked for the employer on July 17, 2012. Claimant agreed to purchase two art objects from resident Inez for \$175.00. Claimant was given the art on condition she remit payment to Inez after her July 10 payday.

On July 13 claimant counted the bill denominations for payment in Inez' presence and the money was placed by claimant in a sealed envelope. Inez' vision is impaired. On July 17 another employee opened the envelope for Inez and counted \$125.00. The shortage was reported to the facility administrator who investigated. The administrator confronted claimant who could not offer any explanation for the missing money and she offered to pay \$50.00 to satisfy the deficiency. The administrator concluded on July 19 that claimant was responsible for the \$50.00 that she likened to an act of theft and discharged claimant. Claimant denies taking the money.

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on July 19, 2012, for taking resident money.

Since claimant put money in a sealed envelope that was later opened by another employee, it is doubtful that any money was taken from it. A reasonable inference is that if the opened envelope contained \$125.00 then this is the amount claimant put in it. The incident is not an act of theft but a claimant failure to pay a resident the selling price for art she purchased in a private business transaction. This cannot be compared to a situation where an employee takes funds from the possession of a resident or resident exploitation in connection with employment.

While the claimant's behavior in the private business transaction with a visually impaired resident is dishonorable, it does not constitute theft that is job disqualifying misconduct.

DECISION:

The department decision dated August 17, 2012, reference 05, is reversed. The claimant was not discharged for misconduct on July 19, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs