

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODY GASCA
Claimant

APPEAL NO. 11A-UI-16417-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTH STAR COMMUNITY SERVICES INC
Employer

OC: 11/27/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 21, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on January 25, 2012. The claimant participated. The employer participated by Mr. Mark Whitmer, executive director. Employer's Exhibits 1, 2, 3, and 4 and Claimant's Exhibits A and B were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jody Gasca was employed by North Star Community Services, Inc. as a full-time community living specialist from February 2011 until November 7, 2011, when she was discharged for misappropriating funds of a client for her personal use.

As a community living specialist, Ms. Gasca's duties included assisting dependent adults with daily living skills, which included taking those individuals to retail stores for purchases. The claimant was discharged following an investigation that was initiated by a consumer complaint. The investigation showed that Ms. Gasca had converted some funds of a client to her own use with purchases and the claimant admitted to the violation. Because the violation was serious and constituted improper conduct toward a vulnerable adult, Ms. Gasca was discharged from her employment.

It is the claimant's position that her inappropriate conduct was caused in part by substance addiction. The claimant agrees, however, that she knew that her conduct was wrong at the time.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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. 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 App. 1992).

In this matter, the evidence in the record establishes that Ms. Gasca was discharged for misappropriating funds from a vulnerable adult. The claimant's job position was to assist vulnerable adults; however, the claimant took the opportunity to misappropriate funds from at least one individual in her care and admitted to the act after an investigation. The claimant also testified that she knew that her conduct was wrong but believes that she was motivated to do so, in part, by her substance addiction.

The administrative law judge concludes from the evidence and the testimony that the claimant did know right from and wrong and chose to violate the employer's rules, the law, and her

obligation to the vulnerable adult by using that person's funds for her own benefits. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated December 21, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw