

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA MADISON
Claimant

APPEAL NO: 07A-UI-05866-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 05/06/07 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mosaic (employer) appealed an unemployment insurance decision dated June 6, 2007, reference 01, which held that Amanda Madison (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2007. The claimant participated in the hearing. The employer participated through Tracy Riley, Ruth Crouse, Carol Mau, Nancy Seel and representative Lynn Corbeil. Employer's Exhibits One and Two were admitted into evidence. 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 employer provides group homes and employment opportunities for adults with disabilities. The claimant was employed as a full-time direct support associate from December 1, 2006 through May 18, 2007 when she was discharged for suspicion of theft. There were three incidents of theft and the claimant was the only staff member who worked across all three sites where the thefts occurred. The first theft of four Ritalin pills occurred on March 12, 2007. The second incident involved a theft of \$40.00 cash on May 2, 2007. The employer investigated both incidents but the results were inconclusive. The final incident occurred on or after May 11, 2007. A client named Sara obtained \$25.00 cash on May 11, 2007 and an employee named Ruth Crouse saw Sara with the money. Ms. Crouse got off work at 11:00 p.m. that night and the claimant took her place. Ms. Crouse returned to work at 7:00 a.m. the following morning and replaced the claimant. The claimant was the only staff member working in that location that night. The client and her mother reported the money was missing on May 12, 2007 and Ms. Crouse completed an incident report. The claimant was the only individual working at the time the money came up missing but she denied all involvement. A search for the money was conducted but it was not found and the claimant was suspended on May 14, 2007 pending further investigation and she was discharged on May 18, 2007.

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 section 96.5-2-a.

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 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for suspicion of theft. Although it is possible the claimant was the individual responsible for the theft, there is insufficient proof to establish that as fact. Mere suspicion of theft is insufficient to result in disqualification of unemployment insurance benefits.

Work-connected misconduct as defined by the unemployment insurance law has not been established and benefits are allowed.

DECISION:

The unemployment insurance decision dated June 6, 2007, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs