

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

TINA M SMITH  
3009 – 12<sup>TH</sup> SW  
CEDAR RAPIDS IA 52404

FOUR OAKS INC OF IOWA  
C/O TALX EMPLOYER SERVICES  
PO BOX 1160  
COLUMBUS OH 43216 1160

Appeal Number: 06A-UI-07309-DWT  
OC: 06/18/06 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Four Oaks Inc. of Iowa (employer) appealed a representative's July 11, 2006 decision (reference 01) that concluded Tina M. Smith (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 8, 2006. The claimant participated in the hearing. Greta O'Clair, Lea Benson and Penny Bommer-Galvin appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Four were offered admitted as 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 1, 2004, a family support specialist. The claimant's works independently when providing services to the employer's client. The claimant worked for two programs. In mid-March 2006, Benson became the claimant's supervisor for one program, and Bommer-Galvin has supervised the claimant in the other program. Bommer-Galvin has supervised the claimant since the claimant started working in 2004.

Prior to June 6, 2006, the claimant's job was not in jeopardy and the employer had no problems with the way the claimant billed clients or requested mileage reimbursement. When the claimant submitted her May billing statement, Benson noticed a discrepancy in the amount of time the claimant reported she had spent with client E.H. in conjunction with the amount she had been authorized to spend with the client. Also, the employer knew about an altercation another employee had with E.H. after E.H. complained that she was not getting all the services she had been billed.

On June 6, Benson asked the claimant to review the amount of time she had billed services to E.H. The claimant looked at her billing and immediately indicated she had made a mistake. The claimant reported four units of services three times in May. The claimant changed the billing to reflect two units of service, or that she spent an hour with this client three times in May. The claimant also admitted she made a mistake when she requested mileage reimbursement for this client of 21 miles just for one visit. The claimant had not requested any mileage the other two times she provided services to E.H. in May. (Employer Exhibit One.) When the claimant submitted a corrected billing statement, she made errors on the mileage reimbursement. (Employer Exhibit Two.) Later, Benson talked to the E.H., who reported initially the claimant only spent 15 minutes on her visits but later indicated she may have spent 30 minutes. Benson changed the claimant's May report to indicate she had only provided one unit of service to E.H. three times in May. Benson also reviewed the claimant's mileage request and reduced some of the mileages the claimant had reported. Benson's report indicated the claimant should receive mileage reimbursement of \$181.03 and the claimant had requested \$201.50. (Employer Exhibits One and Three.)

As a result of the May billing statement discrepancies, the employer placed the claimant on administrative leave on June 9 and asked the claimant to bring in all her files. After the claimant brought in her files, the employer discovered a number of billing discrepancies or questionable billings.

Although the employer had concerns about specific clients, the employer did not ask the claimant to address any of the concerns Benson and Bommer-Galvin found. The employer discharged the claimant on June 15, 2006. Based on the number of discrepancies the employer concluded were not legitimate billings, the employer concluded the claimant falsified the amount of time she provided to clients and submitted mileage reimbursement requests that were not legitimate.

The August 8 hearing was the first time the claimant knew about any of the specific discrepancies the employer found or billings the employer questioned. The claimant explained what she had done with the clients the employer testified about. The claimant acknowledged that with some clients, the documentation she had provided should have been more detailed. The claimant admitted some of the dates she recorded on a billing statement were not correct. When the employer implemented a new program in February, the claimant did not understand how she was to record time spent with a client in two programs. Later, she learned what she needed to do. The claimant did not think to ask a supervisor to review information she had inputted in February because she did not understand that she had done anything wrong.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the evidence, the employer established compelling business reasons for discharging the claimant. The facts indicate the claimant incorrectly reported the time she had provided services to E.H. in May. The claimant immediately made a correction and reduced the amount of time billed to that client in half. Although the client indicated the claimant had only provided 30 minutes of service instead of the hour the claimant reported on her corrected billing, there is a question about this client's credibility. First the client indicated the claimant only provided 15 minutes of services and later indicated the claimant provided 30 minutes of services. The facts indicate the client was not satisfied with the claimant's services. As a result of the client's bias, the claimant could have just as easily provided an hour of service instead of 30 minutes of service the client finally indicated the claimant provided. The mileage errors primarily occurred when the claimant made a corrected billing and in her haste made some careless errors.

The concerns the employer learned about from reviewing files between June 9 and 15 were explained by the claimant. While the claimant made some careless errors by recording incorrect dates, the claimant had a reasonable explanation for the cases the employer testified about. The claimant was responsible for providing an accurate bill for her services and she did not. As a result of this failure, the employer discharged the claimant. Even though the employer discharged the claimant for compelling business reasons, the evidence does not

establish that the claimant intentionally misreported the amount of time she spent with clients or that she deliberately tried to collect reimbursement for mileage that was not connected with her job. The claimant was careless and did not properly document some of her services, but she did not commit work-connected misconduct. As of June 18, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's July 11, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of June 18, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw