

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTORIA L COLEMAN
Claimant

APPEAL NO. 10A-UI-04914-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSTEMS UNLIMITED INC
Employer

OC: 02/28/10
Claimant: Appellant (1)

Section 96.5-2-A – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 24, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 12, 2010. Claimant participated. Employer participated by Mona Dowiat, Assistant Director of Support Services, and Tracy Laws, Employment Specialist. The record consists of the testimony of Mona Dowiat; the testimony of Tracy Laws; and the testimony of Victoria Coleman.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides services to individuals with disabilities. The claimant was an employment support specialist and worked with individuals with disabilities on supported employment. Part of her job duties was insuring the employer's compliance with Department of Labor regulations on sub-minimum wage jobs. She was required to do time studies on individuals to measure productivity so that the proper wages would be paid.

An organization called CARF was responsible for the employer's accreditation and periodically reviewed the employer's employment support and daycare program. A CARF review had been done in 2007, which emphasized the need to be sure that time studies were done to comply with Department of Labor Regulations. A failure to adhere to these regulations would put the agency at risk, including fines from the Department of Labor.

A CARF survey was scheduled to be done on February 15, 2010, through February 17, 2010. The claimant was asked by her employer if the time studies were done and she told the employer that the studies had been completed. The claimant had not done the time surveys and this was discovered during the CARF survey. She had no reason why the surveys were not

done. The claimant was informed that some disciplinary action would be taken. On March 2, 2010, she was terminated due to the severity of her inaction and misrepresentation to the employer.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by a worker to the employer is honesty. An employer can reasonably expect that an employee will do the work assigned and will provide honest responses when asked about the progress of completing a particular assignment. The employer has the burden of proof to show misconduct.

The evidence in this case established that the employer entrusted the claimant with the responsibility of preparing time studies on individuals for whom the employer was providing services. These time studies were in connection with the employer's program of providing supported employment at sub-minimum wages. In order for the employer to maintain its status and funding with the Department of Labor, the time studies had to be completed. The claimant admitted that she had not done the time studies that were to be part of a CARF review done in February 2010. She had no explanation for why the studies were not done. She knew how to do them and knew that she was supposed to do them, but she said she did not do them. Even

more troubling was her assurance to her employer that the time studies were done or at the very least would be done by the time of the CARF survey. She did not do the time studies and they were not finished at the time of the CARF review.

The greater weight of the evidence in this case is that the claimant simply did not do what she had been instructed to do and then misrepresented to her employer the status of the time studies. The claimant deliberately chose not to do the work even though she was capable of doing the work and then lied about the work when asked about her progress. The claimant breached a material duty to the employer both by failing to complete a project vital to the agency's funding and future and by being untruthful when asked about the project by the employer. Misconduct has been established. Benefits are denied.

DECISION:

The decision of the representative dated March 24, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css