

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

AMY M HEPKER
3080 9TH ST APT 4
MARION IA 52302

EQUITY ASSOCIATES INC REALTORS
EQUITY ASSOCIATES INC
1855 1ST AVE SE
CEDAR RAPIDS IA 52402-5474

Appeal Number: 04A-UI-02247-RT
OC: 01/18/04 R: 03
Claimant: Appellant (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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-d – Discharge for Gross Misconduct
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Amy M. Hepker, filed a timely appeal from an unemployment insurance decision dated February 19, 2004, reference 01, denying unemployment insurance benefits to her and determining that all wage credits earned from all employer's prior to the date of her discharge will be deleted from her claim because she was discharged for gross misconduct in connection with her employment. After due notice was issued, a telephone hearing was held on March 18, 2004, with the claimant not participating. Although the claimant had called in a telephone number where she could purportedly be reached for the hearing, when the administrative law judge called that number at 11:04 a.m., the person who answered informed the administrative law judge that the claimant was not there and that she had started a job Monday. The administrative law judge left a message that he was going to proceed with the hearing and

if the claimant wished to participate, she needed to call before the hearing was over and the record was closed. The hearing began when the record was opened at 11:07 a.m. and ended when the record was closed at 11:29 a.m. and the claimant had not called during that time. Robert K. Miell, President, participated in the hearing for the employer, Equity Associates Inc., Realtors, doing business as Equity Associates, Inc. Cindi Peacock, Leasing Agent, was available to testify for the employer, but not called because her testimony would have been repetitive and unnecessary. Employer's Exhibits One and Two were admitted into evidence. Employer's Exhibit Three was not admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One and Two, but not including Employer's Exhibit Three, the administrative law judge finds: The claimant was employed by the employer as a full-time leasing agent from March 2003 until she was discharged on January 19, 2004. Not only was the claimant an employee as a leasing agent, but the claimant also was a tenant of the employer. The claimant was discharged for theft of rental income belonging to the employer and altering and covering up the thefts by changing ledgers. There were other reasons for the claimant's discharge, but this was the main reason. The employer learned of the claimant's actions through the employer's computer and the tracing of entries in the computer. The claimant's actions cost the employer approximately \$3,000.00. No criminal charges were filed against the claimant. The claimant did sign a written statement at Employer's Exhibit One, a copy of which she received, admitting that she changed her own ledger and removed late fees and insurance fees and further admitted the changing of another ledger so that insurance fees were removed and conceding that this was office theft and gross misconduct. The statement was dated January 19, 2004 and the claimant was not forced to sign such statement. The claimant also on January 19, 2004 signed a promissory note promising to pay the employer \$1,029.43 as shown at Employer's Exhibit Two. The claimant was not forced to sign this promissory note. The promissory note is payments the claimant owed the employer for her own matters and for changing her own ledger.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant committed gross misconduct and should forfeit all wage credits earned from all employers prior to the date of her discharge. Her conduct is gross misconduct and the claimant should forfeit such wage credits.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Code Section 96.5-2-b 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:
 - b. If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

Iowa Code Section 96.5-2-b-c 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:
 - b. Provided further, If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.
 - c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement

admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. In order to forfeit all wage credits earned prior to the discharge, the claimant must have been discharged for gross misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged both for disqualifying misconduct and for gross misconduct. The employer's witness, Robert K. Miell, President, credibly testified that the claimant was discharged for theft of rental income belonging to the employer and altering and covering up these thefts by altering and changing ledgers. Mr. Miell also testified that the claimant was herself a tenant as well as an employee and her own cover up for her own matters resulted in losses to the employer of \$1,029.43 for which the claimant promised to repay the employer as shown by the promissory note at Employer's Exhibit 2. The claimant signed a written statement conceding these matters. Mr. Miell credibly testified that the claimant cost the employer approximately \$3,000.00. Mr. Miell credibly testified that the claimant voluntarily signed both documents at Employer's Exhibit One and Two. The claimant did not participate in the hearing to provide evidence to the contrary.

Accordingly, the administrative law judge concludes that the claimant's acts were deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her worker's contract of employment and evince willful or wanton disregard of the employer's interests and is disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

The administrative law judge also concludes that claimant's acts amounted to gross misconduct. The evidence establishes that the claimant signed a statement admitting to the commission of acts constituting an indictable offense. An indictable offense is any offence other than a simple misdemeanor. See Iowa Code Section 801.4. The claimant's written admission indicates that she committed theft in at least the amount of \$1,000.00, which is a class D felony. See Iowa Code Section 714.2. Accordingly, the administrative law judge concludes that claimant's acts were gross misconduct and, as a consequence, not only shall she be disqualified to receive unemployment insurance benefits, but the claimant shall forfeit all wage credits earned prior to the date of her discharge, January 19, 2004.

DECISION:

The representative's decision dated February 19, 2004, reference 01, is affirmed. The claimant, Amy M. Hepker, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits. Further, all wage credits earned by the claimant prior to the date of her discharge, January 19, 2004, shall be forfeited and Iowa Workforce Development shall cancel such wage credits because the claimant was discharged for gross misconduct.

kjf/b