

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

LYNN M NOVAK
LT 20
COUNTRY EST 2ND AVE
COUNCIL BLUFFS IA 51503

REM IOWA COMMUNITY SERVICES INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04520-DWT
OC: 04/02/06 R: 01
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, 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-a - Discharge

STATEMENT OF THE CASE:

REM Iowa Community Services, Incl. (employer) appealed a representative's April 21, 2006 decision (reference 01) that concluded Lynn M. Novak (claimant) was qualified to receive unemployment insurance benefits, and the employer's account would not be charged because the claimant had been discharged for nondisqualifying reason. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 11, 2006. The claimant participated in the hearing. Kelly Flanagan, the program director, appeared on the employer's behalf. 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 April 12, 2005. The claimant worked as a residential counselor in a group home with consumers. One of the consumers the claimant worked with reported that on July 3, 2005, the claimant sexually abused this consumer. Based on this complaint the employer suspended the claimant on July 4, 2005. The claimant denied the consumer's allegation. The employer's investigation did not show that the claimant did or did not commit the abuse. The employer then turned over the investigation to the Department of Inspection and Appeals (DIA).

On October 20, 2005, the employer learned DIA deemed the abuse founded and listed the claimant's name on the abuse registry. The employer is prohibited by law from having anyone on the registry work for the employer. On October 20, 2005, the employer no longer considered the claimant an employee because of DIA's findings.

The claimant appealed the DIA decision. As a result of the claimant's appeal and new information, DIA reversed its earlier decision and removed the claimant's name from the registry. Another person, not the claimant, abused the consumer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges or suspends the claimant 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).

The employer established compelling business reasons for suspending and then discharging the claimant. The employer's own investigation did not establish that the claimant abused a consumer. While the employer was legally bound to discharge the claimant after DIA's October 20, 2005 decision was made, the facts establish that the claimant did not abuse the resident and the claimant did not commit work-connected misconduct. As of April 2, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 21, 2006 decision (reference 01) is affirmed. The employer suspended and then discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 2, 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/pjs