

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSEANNE CRISE
Claimant

APPEAL NO. 07A-UI-00111-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

**OC: 12/03/06 R: 02
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, DES Staffing Services, Inc. (DES), filed an appeal from a decision dated December 28, 2006, reference 01. The decision allowed benefits to the claimant, Roseanne Crise. After due notice was issued, a hearing was held by telephone conference call on January 22, 2007. The claimant participated on her own behalf. The employer participated by Assistant Human Resources Coordinator Kathy Anderson and Director of Finance Randy Stringer. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Roseanne Crise was employed by DES from October 27, 2001 until December 4, 2006. She was not a temporary employee but a full-time “internal” assistant payroll manager.

On July 27, 2006, she received a written warning for paying a temporary worker 40 hours of wages when he had only worked 4 hours for the client. The warning mentioned “numerous” discussions in the past regarding payroll errors and dishonesty in regard to her dealings with management and other employees, as well as generally substandard work. The disciplinary action placed her on a 30-day probation.

On November 9, 2006, she was given a second written warning for trying to access payroll information about other internal employees to compare her wages with theirs. On December 1, 2006, a temporary worker notified the employer he had been paid twice, the same number of hours billed on the accounts of two clients. A comparison of the billing to those two accounts showed two other employees had been paid twice for the same hours. An attempt to stop payment for those checks was unsuccessful because the checks had already been cashed. This represents a potential loss to the employer, as the money cannot be recovered unless the

temporary workers accept other assignments from DES, when it would be deducted from their future pay.

The claimant was questioned about the errors and could not provide an explanation as to why she paid these three employees twice under different client accounts. She was discharged by Finance Manger Randy Stringer.

Roseanne Crise has received unemployment benefits since filing a claim with an effective date of December 3, 2006.

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.

The claimant had been advised her job was in jeopardy as a result of her poor work performance, as well as other matters pertaining to her overall job quality. The final incident was authorizing payment to three temporary workers on two separate accounts for double the amount of wages they legitimately earned. This was not a one-time error in judgment but a final incident where she did not exercise a due amount of diligence in the performance of her job. While it may not have been a willful and deliberate course of conduct contrary to the employer's best interests, the administrative law judge considers it to be continuing negligence to such a degree as to constitute misconduct under the provisions of the above Administrative Code

section and is a violation of the duties and responsibilities the employer has the right to expect of an employee. The claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of December 28, 2006, reference 01, is reversed. Roseanne Crise is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,320.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw