

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

SARA L ROEDING
735 KNOLL AVE
WATERLOO IA 50701

BLACK HAWK COUNTY
C/O PERSONNEL DIRECTOR
316 E 5TH ST
WATERLOO IA 50703

Appeal Number: 05A-UI-06052-JTT
OC: 05/15/05 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)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Sara Roeding filed a timely appeal from the June 02, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 20, 2005. Ms. Roeding participated. Human Resources Director June Watkins represented Black Hawk County. Exhibits One through Six were received into evidence.

FINDINGS OF FACT:

Sara Roeding was employed by Black Hawk County as a full-time building cleaner from February 16, 1989 until May 17, 2005, when Administrator of Country View Care Facility Sherri Niles discharged her for misconduct.

The final incident that prompted the discharge came to the attention of the employer on March 1, 2005, when Administrator Sherri Niles received a report that several items of personal property were missing from residents' rooms. On February 25, a supervisor interrupted Ms. Roeding as she was rifling through a resident's drawer. Ms. Roeding received a reprimand in connection with that incident. When the report of missing items came to the attention of Ms. Niles on March 1, she and the physical plant manager searched Ms. Roeding's locker and located a bottle of perfume that matched the description of perfume removed from a resident's bathroom a month prior. On March 2, Ms. Niles alerted the Black Hawk County Sheriff's Office, and two deputies came to the care facility to investigate. Ms. Roeding provided the deputies with consent to search her locker. The deputies located the perfume bottle. Ms. Roeding claimed her mother given her the bottle. The deputies indicated they would speak to Ms. Roeding's mother. Ms. Roeding first indicated that her mother would not remember giving her the bottle because her mother is senile. Ms. Roeding then indicated she would be willing to admit to the theft just to clear matters up. Ms. Roeding then confessed to the theft, providing the location and date of the theft. Ms. Roeding's oral confession was followed by a written confession on the same date. On March 3, Administrator Niles placed Ms. Roeding on suspension pending discharge. Ms. Roeding was initially on an unpaid suspension, but after two weeks was placed on paid suspension. During this time, the Iowa Department of Inspections and Appeals was investigating the matter as possible resident abuse. On May 17, 2005, Ms. Niles notified Ms. Roeding that she was being discharged from the employment due to the theft.

Black Hawk County has a written policy prohibiting dishonesty or theft of property and providing disciplinary options up to termination of the employment. Ms. Roeding was discharged based on her violation of this policy.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Roeding was discharged for misconduct in connection with her employment. It does.

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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act to misconduct, a discharge her misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record establishes that Ms. Roeding was discharged for an act of theft. Ms. Roeding's act came to the employer's attention on March 1. The employer contacted law enforcement on March 2. Ms. Roeding provided an oral and written confession on March 2. The employer suspended Ms. Roeding pending discharge on March 3. At the time the employer discharged Ms. Roeding, the employer notified Ms. Roeding that she could be discharged for the theft. Ms. Roeding continued on suspension pending discharge until May 17. Since there was only a two-day lapse between the date Ms. Roeding's connection to the theft came to the employer's attention and the date Ms. Roeding was suspended pending discharge, the evidence establishes a current act of misconduct. See 871 IAC 24.32(8). The evidence provides no reason to discount the credibility of Ms. Roeding's confessions to the theft. The evidence further establishes that the theft at issue was part of a pattern of behavior. This is indicated by the circumstances surrounding the interrupted theft on February 25. Theft is by definition an intentional act. It is taking the property of another with the intent to permanently deprive the owner of the property. See Iowa Code section 714.1. Ms. Roeding's criminal behavior while at work, victimizing the residents she was there to serve, was a willful and deliberate violation of the interests of her employer and a deliberate violation of the standard of conduct the employer reasonably expected of her. See 871 IAC 24.32(1)(a).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Roeding was discharged for misconduct in connection with her employment. Accordingly, Ms. Roeding is disqualified for benefits until she has worked in and

been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer shall not be charged for benefits paid to Ms. Roeding.

DECISION:

The Agency representative's decision dated June 2, 2005, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer shall not be charged for benefits paid to the claimant.

jt/kjw