

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

REBECCA S BRANDENBURG
1404 LINCOLN
DUBUQUE IA 52001

WIN INC
HOME INSTEAD SENIOR CARE
860 WHITE ST
DUBUQUE IA 52001-7035

Appeal Number: 06A-UI-01281-HT
OC: 01/01/06 R: 04
Claimant: I' 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

STATEMENT OF THE CASE:

The claimant, Rebecca Brandenburg, filed an appeal from a decision dated January 24, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 20, 2006. The claimant participated on her own behalf. The employer, Home Instead Senior Care, participated by Owner Bob Stricker.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Rebecca Brandenburg was employed by Home

Instead Senior Care from March 5, 2001 until December 28, 2005. She was a part-time care giver working 15 to 20 hours per week.

On December 7, 2005, Owner Bob Stricker received a report from the nephew of one of the clients that Ms. Brandenburg had taken \$500.00 from the client. The employer received conflicting reports from the client, who said it was a loan, and the claimant who said it was a gift. He suspended the claimant on December 8, 2005, pending further investigation of that allegation as well as possible criminal fraud regarding work done by the claimant's husband for the client. He notified the claimant that she could be fired if the investigation established any wrong doing on her part.

The company policy does not prohibit employees from accepting gifts from clients, but any gifts must be reported to the employer and paperwork filled out and signed by the client verifying the gift. Ms. Brandenburg did not report the matter or fill out the paperwork because the money had been given while she was taking the client shopping on her own time. She felt since she was "not on the clock" the matter did not need to be reported. However, the employer considered that the relationship between Ms. Brandenburg and the client was strictly the result of the business relationship and any interaction with the client was work-related.

The investigation took until the end of December with the local police department being involved in the allegations of fraud against the claimant's husband, and other matters. This fraud investigation is on-going by the police but the only thing definitely established against the claimant was the taking of the money and the failure to properly report it to the employer. Ms. Brandenburg was fired by Mr. Stricker on December 28, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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 claimant was aware of the policy requiring any gifts given by clients must be reported. There is nothing in the policy which says only those gifts given while the care giver is "on the clock" must be reported. The employer was concerned about its reputation if employees took gifts from clients under any circumstances, without proper documentation. Ms. Brandenburg's relationship with the person was entirely the result of her regular job duties, and it existed in that regard whether she was "on the clock" or not. The claimant's conduct exposed the employer to allegations of inappropriate business dealings with clients and damage to its business reputation. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of January 24, 2006, reference 01, is affirmed. Rebecca Brandenburg is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/pjs