

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

ALESSANDRA K STAMPS
14 – 13TH ST NW
MASON CITY IA 50401

COMPREHENSIVE SYSTEMS INC
1700 CLARK ST
PO BOX 457
CHARLES CITY IA 50616

AMENDED

Appeal Number: 05A-UI-01393-S2T
OC: 01/02/05 R: 02
Claimant: Appellant (2)

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:

Alessandra Stamps (claimant) appealed a representative's January 31, 2005 decision (reference 01) that concluded Comprehensive Systems, Inc. (employer) discharged the claimant for misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 24, 2005. The claimant participated personally. The employer participated by Mary Amsbaugh, Home and Community Based Services Coordinator, and Sheryl Heyenga, Program Director.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 14, 2003, as a full-time direct support staff person. The claimant worked overnight in a townhouse where three clients resided. She was to perform some housework, organize drawers and generally be in the home while the residents slept. The employer did not sufficiently train the claimant to look in each resident's data book for information on the client. She was told the books were there if she wanted to read them. In addition, the claimant was told she did not have to go upstairs to check on the clients in the rooms because the clients could be heard from downstairs.

On November 11, 2004, the claimant's babysitter was called away to an emergency. The claimant called a co-worker and asked if she should bring her children to work and let them sleep for two hours until someone could take them or call off work to stay with them. The co-worker advised her to bring her children to work. The claimant did not call a supervisor because of the late hour. The claimant brought her children to work. On November 15, 2004, the employer issued the claimant a written warning for her actions.

At about mid-night between January 5 and 6, 2005, the claimant arrived at work. One resident was visiting his family and was not in attendance. He was to return during the day on January 6, 2005. The claimant did not go upstairs to check on the residents because she could clearly hear them when they got up for water or to go to the bathroom. The claimant was not feeling well because she was expecting twins. At 7:30 a.m. on January 6, 2005, the claimant spoke with the nurse. The claimant asked the nurse if the absent client could stay by himself that evening. The nurse thought the claimant did not know the client had not been there the night of January 5 going into 6, 2005. The nurse reported this to the employer. The employer terminated the claimant for failing to know if a client was in the house she was watching.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes she was not.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of misconduct at the hearing. The employer terminated the claimant because it thought the claimant assumed the resident was at the townhouse. The claimant knew the resident was not at the townhouse. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 31, 2005 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

bas/sc/tjc