

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUDY A MCGEE**

Claimant

**APPEAL NO. 10A-UI-15677-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRINITY REGIONAL MEDICAL CENTER**

Employer

**OC: 08/29/10**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Judy A. McGee (claimant) appealed a representative's November 2, 2010 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Trinity Regional Medical Center (employer). This appeal was consolidated for hearing with one related appeal, 10A-UI-15676-DT. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2011. The claimant participated in the hearing. Ted Vaughn appeared on the employer's behalf and presented testimony from one other witness, Deb Delp. 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 25, 2005. She worked full-time as a mental health case manager. Her last day of work was August 23, 2010. The employer suspended her on that date and discharged her on August 23, 2010. The reason asserted for the discharge was failing to observe proper boundaries with a client.

The claimant had a lengthy work relationship with a particular client. In the spring of 2010, the client was having difficulty finding housing that would allow her to keep her three dogs. The claimant owned some rental property in the area, including the home the claimant was receiving from her mother's estate. An agreement was reached between the client and the claimant that the client could rent the claimant's mother's home.

On about May 27 the employer became aware that the client was renting the claimant's property, and expressed concern to the claimant that there could be "complications." The claimant believed that at least part of the employer's concerns had to do with the fact that the property was not yet fully vested in the claimant at that point. She did indicate to the employer that the arrangement was intended only to be "temporary" until some other satisfactory housing

could be found. The employer accepted this, and did not impose any deadlines as to how soon the “temporary” needed to be dissolved.

On August 19 the employer learned that the client was still in the claimant’s property, although her belongings had been moved from the claimant’s mother’s house to another property. The employer determined that the claimant was intentionally maintaining a “dual relationship,” specifically that of a landlord with the client/tenant despite the employer’s expectations. It therefore suspended and then discharged the claimant.

The employer does not have a specific policy, written or verbal, and defines what a “dual relationship” is or what types of relationships with clients are not allowed. She is not a licensed mental health professional. There was no record of any written warnings having been given to the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer’s interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her continuing to have a landlord/tenant relationship with the client after the May 27 discussion. Misconduct connotes volition. Huntoon, supra. While licensed mental health professionals have professional codes of conduct that specifically address and restrict those persons from having “dual relationships” with clients, the claimant is not subject to those codes. The employer does not have a clearly established “code” of its own prohibiting such “dual relationships” which would then have been communicated to the claimant. While there was a verbal discussion between the employer and the claimant on May 27, the full extent or detail of the employer’s concern or expectations was

not spelled out to her at that time. The employer tacitly agreed to the continuation of the relationship on a “temporary” basis, but did not define its expectations as to how long (or short) “temporary” should be. The claimant did not realize that her continuation of the relationship through August 19 would not be acceptable.

Under the circumstances of this case, the claimant’s continuing to be a landlord to the client was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence or was a good-faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative’s November 2, 2010 decision (reference 02) is reversed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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