

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORA COX
Claimant

APPEAL NO: 09A-UI-16662-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSTEMS UNLIMITED INC
Employer

OC: 10/04/09
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Systems Unlimited, Inc. (employer) appealed an unemployment insurance decision dated October 27, 2009, reference 01, which held that Debora Cox (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 15, 2009. The claimant participated in the hearing. The employer participated through Mona Dowiat, Assistant Director of Support Services and Lonna Blodget, Staff Manager. Employer's Exhibits One through Three were admitted into evidence. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

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 employed as a part-time counselor from September 16, 2005 through June 26, 2009. The employer is a non-profit group who provides assistance to people with disabilities and other challenges. The claimant was discharged after she was involved in three investigations involving some type of theft from a dependent adult. The theft occurred when the claimant was working by herself or was at the location immediately before and/or immediately after the incident occurred.

On June 4, 2009 Brandi Monaghan contacted Mona Dowiat of Human Resources to report that a theft of money had occurred at location 326 on May 8, 2009. The clients have petty cash so that they can be taken to the movies or to the store, etc. Petty cash for each individual is counted by staff and the individual at every shift change and both initial the form indicating the total amount. The petty cash is then stored in a locked file cabinet and only staff who have a key to that house have the key to the locked file cabinet. The petty cash was counted at location 326 on May 8, 2009 at 7:00 a.m. and the individual had \$65.00. Between 10:00 a.m.

and 10:30 a.m. on that same day, the claimant was not working but came into the office and got the house key for location 326 from Ms. Monaghan. The claimant stated that she needed to get the schedule for April 2009 so she could report to her attorney the dates she worked in April 2009. Ms. Monaghan told the claimant the schedule was on the desk. There were no other staff members present at this location and the two clients who live there were sleeping.

The claimant returned to the office approximately 30 minutes later and reported that the cabinet was unlocked. Ms. Monaghan thought it strange that the claimant would have tried to get into the cabinet, which she did since that was the only way to determine it was not locked. At 3:00 p.m. when two staff members started their shift and began to count the petty cash, they noticed \$15.00 was missing from the petty cash. The staff members asked the clients if they knew where it was and they did not. The staff members looked around the file cabinet but the money was not there. The claimant was the only individual who had access to the file cabinet between 7:00 a.m. and 3:00 p.m. When questioned about it, the claimant stated that the schedule was not on the desk so she went to look in the staff book, which is kept in the locked file cabinet. The claimant said she had no idea where the petty cash went. The employer could not definitively conclude the claimant took the money even though she was the only individual who has access to it when it went missing.

On June 23, 2009 the claimant called Staff Manager Lonna Blodget and reported that while she was passing the morning medications, she noticed the client had two missing medications for her evening medications. There was an evening dose of Ambien missing, which is a sleeping medication and the spare dose of Ambien was also missing. The manager thought it odd that the claimant would have even looked at the evening medications since she had no reason to do so. The claimant explained that she thought it was important to report it so that new medications could be ordered from Hy-Vee. However, medications are only ordered on Thursdays and this was a Tuesday. Again the employer could not confirm the claimant took the medication but it was there when she started her shift and was missing at the end of her shift. Ms. Blodget also noticed the claimant had been recently falling asleep during company meetings.

On June 26, 2009 Ms. Blodget reported to Ms. Dowiat that a client's food stamp card was discovered missing on June 25, 2009. The card was determined to be missing when the staff prepared to take the client grocery shopping. The client last used her card on June 17, 2009. This particular client has short term memory loss so staff assists her with the use of the card, which is kept in a locked cabinet. An investigation was done and the state was contacted to see if the card had been used subsequent to June 17, 2009. At 8:03 a.m. on June 23, 2009 someone called the state to inquire about the card balance. The client is not capable of this type of thought process. The card was then used at 9:30 a.m. on June 23, 2009 at the Fareway grocery store in Washington, Iowa for a total amount of \$59.63. Another inquiry was made as to the card's balance at 3:00 p.m. on the same date. The employer asked that the card be deactivated and requested a new card for this client.

The employer concluded the use of the food stamp card was premeditated due to the inquiry check prior to its use. It was also concluded that a staff member was the person responsible for taking and using the card. The employer investigated and determined that the claimant had left this client's residence at approximately 9:00 a.m. on June 23, 2009. No other staff was working at the house at that time. This was one more situation where the employer could not establish unequivocally that the claimant took the food stamp card but determined it was more than likely. Furthermore, since this was the third incident in which the claimant was involved, the employer felt it was in the clients' best interest to terminate the claimant effective June 26, 2009.

The claimant filed a claim for unemployment insurance benefits effective October 4, 2009 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

Iowa Code § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer has a duty to ensure the health, safety, and well-being of the clients they serve but could not do this with the claimant's continued employment. She was discharged after she was involved in the investigations of three incidents of theft. Although the claimant denies responsibility, she was the only individual who could have been responsible and she failed to provide any other reasonable explanation. The claimant's behavior was extremely questionable and the preponderance of the evidence confirms her involvement in the thefts. The claimant's conduct shows a willful or wanton disregard of the

standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated October 27, 2009, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs