

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LISA R DAVIS
Claimant

APPEAL NO. 14A-UI-11469-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMFORT KEEPERS/J & J ENTERPRISES
Employer

OC: 10/12/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 28, 2014, reference 01, that concluded she was discharged for work-connected misconduct . A telephone hearing was held on November 25, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Dawn Garrett participated in the hearing on behalf of the employer. Exhibits One and A, B, and C were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time for the employer as a caregiver from May 17, 2013 to August 22, 2014. After August 22 the claimant was off work on medical leave for six weeks.

The claimant was informed and understood that under the employer's policies, employees were not allowed to take money from clients.

In May 2014 the claimant was providing in-home care to a 97-year-old client. They were talking about damage that caused by tornadoes and storms in the area and the claimant told the client she had some damage to her house. The client told the claimant that he would like to help her out with some money for repairs to her home. He told her that it would be a loan not a gift and she would have to pay him back. The claimant knew that it was wrong to take money from the client and declined the loan. The client, however, kept insisting so she agreed to a loan of \$4000 and signed a repayment agreement. A check for \$4000 was written by the client on June 4. He wrote the check to the claimant's mother because the client and the claimant knew that a check written to the claimant could be considered improper. This was done to protect the claimant so the employer would not find out. The client's power of attorney is his son. The son was aware of the loan when the check was issued and initially did not have an issue with the loan. As of the end of September the claimant had made the \$1000 in payments required under the loan.

In September 2014 the client's son notified the employer about the loan the claimant had received back on June 2014. On September 22 the claimant met with the Jim Nickerson, owner; Sheryl Brewer, General Manager; and Dawn Garrett, Office Manager. She admitted to receiving the loan. At the end of the meeting, she was informed that they were going to discuss the matter and decide what to do and she was not to have any contact with the client.

Later that day, the claimant texted Garrett and asked what she should do if the client tried calling her. Garrett replied that she should not answer. The client did try calling the claimant later that day but the claimant did not answer. The client's son noticed the client on the phone when he called the claimant and believed his father had talked to her, which is not true.

On September 23 the son falsely reported to the employer that his father had talked to the claimant on the phone the previous day.

The employer discharged the claimant on October 1, 2014 for receiving the loan from the client, talking to the client in violation of the instruction given to her on September 22, providing her personal number to the client, discussing her personal situation with him, and disclosing confidential information to her mother.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(8).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The only thing that occurred in this case that rises to the level of misconduct is the loan. I believe the claimant's testimony that she never talked to the client after being warned not to. I do not think that she violated client confidentiality or improperly gave the client her cellphone number.

I do not believe the claimant's testimony that the owner did not care about the loan given to the claimant. The termination document listed it as one of the reasons for her discharge. The claimant knew the loan was improper and the fact that the check was made out to her mother amplifies this. The fact that she took the loan reluctantly does not change things. Even though there was no evidence of any improper influence and the claimant was repaying the loan, there is potential liability to the employer since the claimant was their employee and

her actions can be attributed to them. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

An argument could be made that the discharge was not based on a current act since the loan took place in June 2014. The Iowa Court of Appeals' interpreted this rule in *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). In *Greene*, the court ruled that to determine whether conduct prompting the discharge constitutes a disqualifying current act, the decision maker must consider the date on which the conduct came to the employer's attention and the date on which the employer notified the employee that the conduct provided grounds for dismissal. Any delay in taking action must have a reasonable basis. I conclude that the employer discovered the loan in September 2014 and notified and questioned the claimant about the issue on September 22 and that it was considering discipline on the day. The discharge was based on a current act of misconduct.

DECISION:

The unemployment insurance decision dated October 28, 2014, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/can