

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACIE L SCHULZ
Claimant

APPEAL NO. 13A-UI-09064-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI-SERVICES OF NORTHERN IOWA
Employer

OC: 07/07/13
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Agri-Services of Northern Iowa, Inc. (ASI), filed an appeal from a decision dated July 29, 2013, reference 01. The decision allowed benefits to the claimant, Tracie Schulz. After due notice was issued, a hearing was held by telephone conference call on September 11, 2013. The claimant participated on her own behalf. The employer participated by President Todd Lundgren and was represented by Von Boyenger.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Tracie Schulz was employed by ASI from July 9, 2007 until June 27, 2013 as a part-time secretary. The claimant and the business owner, Todd Lundgren, are brother and sister. Mr. Lundgren had previously had a business associate named Tobin. When the business relationship ended Tobin began a business which competed with ASI.

Mr. Lundgren discovered the claimant was having “an affair” with Tobin in late May 2013. He confronted her about it and said she must either end the relationship; due to “conflict of interest” or quit. She said it was her business and he had nothing to say about what she did on her own time. The employer believed certain information about his business was being relayed by Ms. Schulz to Tobin which cost ASI some business contracts.

In the month of June 2013 Mr. Lundgren’s son saw Tobin and Ms. Schulz alone together on a boat on Lake Okoboji and another employee reported seeing the two of them together at a local convenience store some time later. Ms. Schulz maintained they were only friends but admitted the only times she was seen with him, Tobin’s wife and children were not present and she was not friends with Tobin’s wife.

After the second incident Mr. Lundgren again told Ms. Schulz on June 27, 2013, she must either end the relationship due to conflict of interest, or leave her job. She stated she would not end the relationship and was dismissed.

Tracie Schulz has received unemployment benefits since filing a claim with an effective date of July 7, 2013.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant was told she must end her relationship with the employer's former business partner due to conflict of interest. Ms. Schulz had intimate knowledge of the employer's business including clients, vendors and financial situation.

Whatever the nature of the relationship between the claimant and Tobin is not the issue, but only that it was admitted "close" and involved a marked degree of time alone. Mr. Lundgren and Tobin were engaged in the same business in the same area of the state. The administrative law judge considers the situation to be a substantial conflict of interest for Ms. Schulz and her decision not to comply with the employer's request to either end the relationship or end her employment is misconduct. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The representative's decision of July 29, 2013, reference 01, is reversed. Tracie Schulz is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code section 96.3-7-b is remanded to the Agency.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css