

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE M DOUGLAS
Claimant

APPEAL NO. 11A-UI-14258-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 10/09/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The University of Iowa filed a timely appeal from an unemployment insurance decision dated October 25, 2011, reference 01, that allowed benefits to Christine M. Douglas. After due notice was issued, a telephone hearing was held November 22, 2011, with Ms. Douglas participating and presenting additional testimony by Torrey Landry. Exhibit A was admitted into evidence on her behalf. Benefit Specialist Mary Eggenburg and Financial Operations Human Resources Director Suzanne Hilleman participated for the employer. Employer Exhibit 1 was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Christine M. Douglas was employed by The University of Iowa from July 3, 1995, until she was placed on administrative leave on April 22, 2011, and discharged on May 9, 2011. She last worked as an administrative assistant.

The events leading to the separation occurred in 2009 and 2010. Ms. Douglas was involved in a special project concerning a MAPPA conference hosted by the university but held off campus. The university purchased some 24,000 square feet of carpet squares for flooring in the vendors' area of the conference facility. After the conference, the carpet was to be placed in storage pending disposition. Eventually, the carpet was stored on premises owned by the company that had sold the carpet to the university initially. Some of the carpet was later found installed in the home of a relative of a close friend of Ms. Douglas. The relative also wrote a personal check in the amount of \$500 to Ms. Douglas. He gave the check to Ms. Douglas' friend, who in turn gave it to Ms. Douglas' husband, who delivered it to her. Criminal charges are pending on this transaction. Investigation of the situation goes back to at least the early part of 2011.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the discharge was a current act of misconduct. See 871 IAC 24.32(8).

The evidence establishes that the events causing the discharge occurred in 2009 and 2010. The investigation began no later than the early part of 2011. Ms. Douglas was first notified that her job was in jeopardy on April 22, 2011, when she was placed on administrative leave. The administrative law judge concludes from the evidence that the employer was aware of the incidents for a minimum of three months before the claimant was suspended and that it did not take employment action until after criminal charges were filed. The administrative law judge concludes that the employer has not established a discharge because of a current act of misconduct. No disqualification may be imposed at this time.

An individual also may be disqualified for benefits if the individual is discharged because of gross misconduct.

Iowa Code section 96.5-2-b 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:

b. If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

Iowa Code section 96.5-2-b-c 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:

b. Provided further, If gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

Criminal charges are pending. If the charges result in the claimant pleading guilty or being found guilty of an indictable offense, the university should promptly notify Iowa Workforce Development so that this matter may be reviewed in light of the court proceedings.

DECISION:

The unemployment insurance decision dated October 25, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits at this time, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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