

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANA J ELIFRITZ**  
Claimant

**APPEAL NO. 12A-UI-08942-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESLEYLIFE**  
Employer

**OC: 06/17/12**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated July 18, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 27, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Linda Lowe. Tom Kuiper participated in the hearing on behalf of the employer with witnesses, Betty Stone, Debra Hampe, and Maria Jordon. Exhibits One through Four were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a home health care aide from July 6, 2006, to June 15, 2012. She was informed and understood that under the employer's work rules, she could not enter into a business transaction or accept direct employment with a current or former client of the employer privately while employed with the employer or for six months after her separation from employment and was prohibited from accepting gifts or tips from client or their families.

The claimant was verbally warned on April 5, 2011, about getting involved with family issues after she left a note for another aide stating that the client was hiding toilet paper to see if the client's daughter would buy any. The daughter learned about the note and complained. The claimant received a written warning on September 12, 2011, for having inappropriate communications with a client about another aide. On December 21, 2011, the claimant received a warning for accepting toys as a gift from a client.

During the week of June 11, the claimant accompanied a client to his birthday celebration at an Iowa Cubs baseball game. She was invited by the client's daughter. After attending the game, the client's personal secretary gave the claimant money as a gift. It is likely the money was from the client's funds. The claimant had not worked directly with the client for some time

because he had moved to a nursing home but the nursing home is owned by the employer. The claimant did not notify the employer about accompanying the client or receiving the gift.

Another employee noticed the claimant was accompanying the client to the ballgame and reported this to management. When the claimant was questioned about this, she denied taking the client to the baseball game or being paid for it. She did admit that she had gone to the game and had received money from the client's secretary.

On June 15, 2012, the employer discharged the claimant for again failing to maintain a professional relationship with her clients and family members by going to the game with the client and taking money from the client.

The claimant filed for and received a total of \$1,308.00 in unemployment insurance benefits for the weeks between June 17 and July 14, 2012.

### **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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I cannot find that the claimant was actually hired and paid to perform services based on the evidence. But the claimant had to have known the money she received from the secretary probably came from the client's funds and accepting money from a client of the employer was prohibited by the employer's rules. She had been warned about similar conduct in the past.

The claimant's violation of a known work rule 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.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the

overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated July 18, 2012, reference 01, is reversed. 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. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs