

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOPE L MCVAY
Claimant

APPEAL NO. 12A-UI-09821-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 07/08/12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Mosaic, filed an appeal from a decision dated August 9, 2012, reference 02. The decision allowed benefits to the claimant, Hope McVay. After due notice was issued, a hearing was held by telephone conference call on September 6, 2012. The claimant participated on her own behalf. The employer participated by Executive Director Stephanie Gehlhaar, Human Resources Manager Shanda Hiatt, Direct Support Coordinator Christine Wilhelm, Associate Director Shanda Hiatt and was represented by TALX in the person of Alyce Smolsky. Exhibit One admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Hope McVay was employed by Mosaic from September 28, 2000 until July 5, 2012. At the time of separation she was a full-time direct support manager. Prior to that she was a direct support worker and had received several warnings for failing to submit complete and accurate reports regarding client funds, for which she was responsible.

She became the support manager 15 months prior to the separation. During that time she was trained and overseen by Direct Support Coordinator Christine Wilhelm who was also the person who whom the claimant could turn for information or help.

As the support manager Ms. McVay was required to make sure all the direct support workers under her supervision have their monthly reports to her by the first of the next month, to review the reports for accuracy and completeness, and to have the reports forwarded to Ms. Wilhelm by noon on the second day of the month. She had been given a written warning June 19, 2012, for insufficient documentation for May which caused the employer to have to notify the state of Iowa, which is billed for the services, that potential fraud may have occurred and refunding money Mosaic had already received.

The refund of money billed to the state is a consequence of inaccurate or untimely submission of the required documentation. If errors are not detected and corrected, or if the reports are not timely, fraud charges may be brought against the employer and its license could also be in jeopardy.

On July 2, 2012, the claimant notified her supervisor she was not able to submit the documentation by the deadline that day and was given an extension until July 3, 2012. She was unable to make that deadline so it was changed again to July 5, 2012. Ms. McVay did manage to make that deadline although there were inaccuracies discovered in the reports.

On July 9, 2012, the claimant was discharged for failure to perform the essential functions of her job. Ms. McVay has received unemployment benefits since filing a claim with an effective date of July 8, 2012.

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 had been advised her job was in jeopardy as a result of her poor work performance. She claimed to be too busy doing direct care herself to submit the documents on time. But there was nothing to prevent her from getting the reports from her staff on a weekly basis and doing the reviews in increments rather than waiting to do all of paper work at the end of the month. She had been thoroughly trained and knew her job duties and the employer's

expectations, but did not perform them as required. In addition, she did not ask for help from her supervisor when she knew that she was getting behind. Instead she announced at the last minute she was unable to meet the deadline. Then she missed the second deadline.

The record establishes she was capable of performing the job satisfactorily as she did so during her training period. She did not give adequate reason for failing to meet those requirements in the last months of her employment. Failure to work to the best of one's ability is conduct not in the best interests of the employer and a violation of the duties and responsibilities the employer has the right to expect of an employee. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of August 9, 2012, reference 02, is reversed. Hope McVay 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 issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css