

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY TYLER**  
Claimant

**APPEAL NO. 11A-UI-05898-W**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**OC: 4/3/11  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a fact-finding decision dated April 22, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, an in-person hearing was scheduled for and held on June 10, 2011 in the Cedar Rapids Workforce Center. Claimant participated personally. Employer participated by Sara Etringer, Program Director and Janet Sabin, Program Coordinator. Employer Exhibits A and B were admitted into evidence. Claimant Exhibits 1 and 2 were admitted as well.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds as follows. Claimant began working for the employer in August 2009. Claimant worked as a direct support professional. Employer is a human services organization which serves individuals, referred to as “consumers” with developmental disabilities.

Claimant was discharged on March 30, 2011 by employer due to an incident which occurred on March 29, 2011. Claimant was working with several individuals with disabilities. She took them to dinner at Perkins. One consumer, Tod, did not attend. Claimant texted her supervisor, Janet Sabin and indicated that Tod would likely stay back while the rest of them went to Perkins. The consumers paid for their meals with “gift cards.”

On the morning of March 30, 2011, Ms. Sabin relieved claimant of her work duties. She reviewed the gift card receipts submitted from the night before. Ms. Sabin discovered that the gift card receipts in general, were in disarray. She further discovered that a gift card receipt had been submitted for the consumer, Tod, who had not gone with the others. Ms. Sabin immediately conducted an appropriate investigation and discovered that Tod had not gone out and no food from Perkins was provided to him. She then called the claimant who indicated that it must have been an accident. Further investigation revealed that the claimant had indicated in the daily progress notes that the consumer had participated in the outing to Perkins.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant used a consumer's meal card to purchase a meal for herself. The claimant requested an in-person hearing. She appeared genuine and sincere that this was an unintentional mistake. She immediately offered to reimburse the employer and she apologized. In the final analysis, however, the claimant simply could not provide a reasonable explanation as to how she "accidentally" used a consumer's gift card to pay for her own meal. Even assuming that this was an unintentional mistake, it was a significant mistake with such a high level of negligence that it amounts to misconduct under Iowa law. The facts in this instance look particularly bad since the claimant had documented in two separate areas that the consumer did participate in the trip to Perkins. This is simply the type of activity that an employer and consumers have a right to expect accuracy in accounting and recordkeeping. The failure to do so, whether intentional or not, amounts to misconduct under the facts presented.

**DECISION:**

The fact-finding decision dated April 22, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Joseph L. Walsh  
Administrative Law Judge

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Decision Dated and Mailed

jlw/css