

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAIMANT

APPEAL NO. 10A-UI-05711-NT

EMPLOYER

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/07/10
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated April 5, 2010, reference 01, which held that misconduct could not be established in connection with the claimant's separation from employment. After due notice was issued, a hearing was held by telephone on July 7, 2010. The claimant and the employer both participated personally.

The case contains material that is required by law to remain confidential as to the general public. The dependent adult abuse information provided in the hearing will only be made available to the parties to this proceeding and to others who are legally authorized to have access to the information pursuant to Iowa Code section 235B.6.

ISSUE:

At issue in this matter is whether the claimant was separated from employment for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: The employer is a company that provides service to individuals who are disabled and/or dependent providing life skill assistance at the individuals' homes or in public settings. The claimant worked as a full-time supported living specialist and was paid by the hour.

The claimant was discharged after an individual that the claimant had been assigned to provide assistance to alleged that the claimant may have misappropriated some items for the claimant's own use that were purchased for the client's benefit. When the items that had been purchased and alleged by the client to have been misappropriated by the claimant could not be located at the client's apartment, the employer believed that this verified the client's complaint and a decision was made to terminate the claimant. The claimant at all times denied misappropriating any items or acting inappropriately. Prior to the allegation in question the claimant had not been warned or counseled for any reason and had an unblemished employment history.

Prior to the allegation being made by the client, the claimant had requested that a second employee also be assigned to work with this client because of credibility concerns.

The client had made two previous requests to have a new supported living specialist assigned to her. When the employer did not grant the client's previous requests, an allegation was made that the claimant had misappropriated the property in question.

REASONING AND CONCLUSIONS OF LAW:

An administrative agency making a determination regarding an unemployment compensation claim pursuant to Iowa Code section 96.6 is authorized to have access to potential dependent adult abuse information. Iowa Code section 235B.6(2)d(4). However, the administrative agency is prohibited from re-disseminating the information to individuals who would not otherwise have independent access to the information under section 235B.6.

Appeal hearings and records of Workforce Development are public records within the meaning of the Iowa Open Records Act (Iowa Code Chapter 22), the Iowa Administrative Procedures Act (Iowa Code Chapter 17A), and the Iowa Employment Security Law (Iowa Code Chapter 96). Pursuant to Iowa Code section 22.2(1), every person has the right to examine and copy a public record and to publish or otherwise disseminate public records or information contained therein. The provisions of Iowa Code section 17A.12(7) require that contested case proceedings be open to the public. Unemployment appeal hearings are to be conducted pursuant to the provisions of Chapter 17A. Rules of Workforce Development require that the administrative law judge decisions be maintained on file for public inspection. See 871 IAC 26.17(3).

The prohibition against re-disseminating potential dependent adult abuse information requires that the administrative law judge issue a determination that does not identify the parties. To do otherwise would necessarily involve re-dissemination of information required by law to remain confidential. A public decision shall be issued that does not identify the parties. A decision with identifying information will be issued to the parties. That decision and the hearing record, including the audio recording, shall be sealed and not publicly disclosed.

The claimant was discharged from her employment solely based upon the allegation of a client that the claimant had misappropriated a few items that had been purchased for the client's use while shopping. Prior to the allegation in question the claimant had an unblemished employment history and had not been warned or counseled for any reason. Prior to the allegation the claimant had specifically requested that a second employee be also assigned to work with this client. The claimant had made this request because she had noted numerous credibility issues involving the client and the claimant felt that a second employee would be beneficial if allegations of this nature were made against the claimant.

The evidence in the record also establishes that the client in question had made two previous requests to have a different supported living specialist assigned to her but did not stated any reasons for her requests. After the previous requests were denied, the client then alleged that items of a small value were being taken by the caregiver. In order to save her employment the claimant was required to in effect, disprove a negative. The claimant was required to show that the items alleged to have been taken were still in the client's possession. And when the claimant could not do this she was discharged.

The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable. The unsubstantiated allegations of misappropriation in an otherwise unblemished employment history are not sufficient to establish misconduct. The

claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 5, 2010, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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