

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAKOTA S ZIRBEL**  
Claimant

**APPEAL NO. 12A-UI-10401-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SYSTEMS UNLIMITED INC**  
Employer

**OC: 07/29/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated August 23, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 25, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Jenny O'Brien participated in the hearing on behalf of the employer with a witness, Jolene Sorenson.

**ISSUE:**

Was the claimant suspended or discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a senior counselor in a supported living home from September 2008 to July 29, 2012. As part of her job responsibilities, she was responsible for handling purchases and finances for the disabled clients she supervised.

At the end of July, the Department of Human Services conducted an audit at the home the claimant supervised. The audit discovered several purchases the claimant made for clients in July 2012 where the items could not be found in the home. There were receipts for the purchases, but the items were missing. The purchases included a DVD/VCR combo player, beach towels, an air mattress, a 12-volt air pump, a movie, mouthwash, a Canon camera, and extra food from a 4th of July party. One receipt included a case for an MP3 player and a cell phone car charger that the claimant admitted she purchased for herself but she reimbursed the client for. She signed all the checks for the items.

The claimant was suspended on July 29, 2012, pending investigation because the employer believed she had misappropriated the items missing from the house. When questioned on July 30 about the missing items, the claimant admitted she had mistakenly put her car charger and MP3 player case with a client's purchases at Wal-Mart when she was checking out, but said she then got a Wal-Mart gift card for the client to reimburse him for the approximately \$13.00 for her items. When questioned, the claimant denied taking or keeping any of the purchased items, provided explanations for most of the items' whereabouts, and offered to go to the home to look

for them. There had been times when clients have lost items or taken them with them on family visits. Sometimes roommates have hid or taken things belonging to other roommates.

Initially, the employer was concerned that a client's petty cash was missing. When the claimant was questioned about the missing items, she turned in about \$74.00 from a client's petty cash fund that she had taken to purchase a Greyhound bus ticket for a client who was traveling to Des Moines for the state fair. She had to use cash because Greyhound does not take checks. She had bought the tickets a couple of days earlier and had not had a chance to return the funds to the place where the petty cash is kept. The claimant did not misappropriate the items the employer alleged.

The claimant filed a new claim for unemployment insurance benefits effective July 29, 2012, because of her suspension pending investigation. She filed weekly claims for three weeks—the weeks ending August 4, 11, and 18. She received benefits for the first two weeks of \$331.00 but did not receive benefits for the week ending August 18, because her wages for the week were too high.

The employer finished its investigation and discharged the claimant on August 23, 2012, after the claimant had stopped filing claims for benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged or suspended 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 unemployment insurance rules provide: "Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered discharged, and the issue of misconduct must be resolved." 871 IAC 24.32(9).

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The first question is whether the claimant's initial suspension on July 29, 2012, was a "disciplinary suspension." The evidence shows that when claimant was suspended, it was not a disciplinary suspension or layoff; it was a pre-disciplinary suspension pending the outcome of an

investigation. As a result, the claimant would not be subject to disqualification during the weeks she filed for benefits from July 29 through August 18, 2012.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The preponderance of the evidence fails to prove the claimant misappropriated the items the employer alleged. The claimant testified credibly that she never took any of the items and provided explanations for most of the items' whereabouts or alternatives for how the items could come up missing. The employer did not provide any firsthand witnesses to show the claimant took the items or had the items that were missing. She was not the only person with access to the times.

While the employer may have had a reason for suspending and then discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

**DECISION:**

The unemployment insurance decision dated August 23, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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