

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELONY RENZE**

Claimant

**APPEAL NO: 12O-UI-03027-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ECKERD YOUTH ALTERNATIVES INC**

Employer

**OC: 11/13/11**

**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 8, 2011, reference 01, decision that allowed benefits to the claimant. This case was originally decided on timeliness. The employer appealed that decision and the Employment Appeal Board reversed the administrative law judge's decision regarding the timeliness of the employer's appeal and remanded the case for a decision on the merits in an order dated March 26, 2012. After due notice was issued, a hearing was scheduled by telephone conference call before Administrative Law Judge Julie Elder on May 29, 2012. Because evidence about the separation from employment was taken during the first hearing and was still available, the parties agreed to allow the administrative law judge to make a decision based on the evidence submitted during the first hearing. Employer's Exhibits One through Four were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time care coordinator for Eckerd Youth Alternatives from July 12, 2011 to November 15, 2011. The claimant's job involves working with troubled clients and families who are court ordered to accept the employer's services in their homes. At the time of the claimant's hire she disclosed her relationship with a client, who was a childhood friend, and the employer told her it was a conflict of interest for her to work with the client and her family and the claimant agreed. The claimant was aware the client had legal problems, prescription drug abuse issues and had written bad checks in Minnesota and South Dakota. Even though the claimant was not working with the client, the employer's rules still govern outside relationships with clients. On November 11, 2011, the client asked the claimant to ride with her to pick up the client's children in Worthington, Minnesota. Employees are required to obtain a supervisor's verbal approval before taking a client on an approved social outing and the claimant did not speak to her supervisor before traveling to Minnesota with the client during non-work hours. While in Minnesota the claimant and the client stopped at Shopco, which is similar to K Mart. They went separate directions in the store, meeting up at one point when the

client asked the claimant to hold a pair of children's scissors for her. The claimant put the scissors on top of her purse and then in her coat pocket. The claimant was experiencing low blood sugar and needed to eat. The parties went to the register and the claimant bought a soda and some food to help with her low blood sugar. When they stepped outside they were stopped by store security and escorted back into the store and to the office. Security asked the claimant if she had anything that did not belong to her and the claimant indicated she had a receipt. Security then asked the claimant if she had scissors in her pocket and the claimant said yes and pulled out the scissors. Security inquired as to whom the scissors were for and the claimant stated they were for the client and security said they did not belong to the client. Security notified the claimant it had called the police. The claimant apologized and offered to pay for the scissors but the store would not allow her to do so. It also told the claimant the scissors had been removed from the packaging. The claimant and the client were arrested for shoplifting and taken to the police department. Once there the claimant was told the scissors, as well as two rings, were stolen and all were taken out of the packaging and had the tags removed. The claimant was charged with fifth degree theft. Security told police he observed the client take a pair of scissors from the shelf and open them (Employer's Exhibit Three). Security also stated the client later gave the claimant the scissors and they used them to cut open some jewelry and then the claimant put the scissors and jewelry in her pocket. (Employer's Exhibit Three). The claimant told police she worked for the "Department of Homeland Security" and if her name was in a report with the client she would lose her job (Employer's Exhibit Three). On November 14, 2011, another employee informed the employer of the claimant's arrest and the employer called the claimant who confirmed she was arrested while with a client. The employer terminated the claimant's employment November 15, 2011, for having an inappropriate personal relationship with a current client that was outside the scope of the work environment and violated boundaries.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer works with troubled families, usually involved with the court system. The claimant informed the employer at the time of hire she had a personal relationship with the client and both parties agreed it would be inappropriate and a conflict of interest for the claimant to be involved with the client. While the claimant maintains she was off work and not working directly with the client on November 11, 2011, when she went to Minnesota with the client, she told the police she would lose her job if her name was listed with the client's name in a report, indicating a knowledge that her involvement with the client was inappropriate and would be unacceptable to the employer. Not only was the claimant with the client on an unapproved social outing, but they were caught shoplifting at Shopco. The claimant blames low blood sugar for her actions, but the security officer told the police he observed the client open the package containing the scissors and then give the scissors to the claimant to use to remove packaging and tags from the rings, which were in the claimant's possession. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. However, the Employment Appeal Board stated in its remand order dated March 26, 2012, that the rule of double affirmance applies in this case. Therefore, the claimant is not responsible for the overpayment of benefits.

#### **DECISION:**

The December 8, 2011, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount,

provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. However, the rule of double affirmance applies and consequently the claimant is not overpaid benefits.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/css