

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CHRISTINA M DEIBLER
1644 N FEDERAL
MASON CITY IA 50401**

**COMPREHENSIVE SYSTEMS INC
1700 CLARK ST
PO BOX 457
CHARLES CITY IA 50616**

**Appeal Number: 04A-UI-09847-CT
OC: 07/25/04 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Christina Deibler filed an appeal from a representative's decision dated August 31, 2004, reference 01, which denied benefits based on her separation from Comprehensive Systems, Inc. (CCI). After due notice was issued, a hearing was held by telephone on October 5, 2004. Ms. Deibler participated personally. The employer participated by Mary Amsbaugh, Program Director, and Sheryl Pringle, Personnel Director.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Deibler was employed by CCI from June 10, 1996 until

August 24, 2004 as direct support staff. The employer provides supportive services for mentally and physically challenged adults and children. Ms. Deibler was discharged for violation of the employer's policies .

Staff members are not to have clients in their homes unless prior approval is given by the program director. The approval is required to ensure that the reason for the home visit is consistent with the needs of the client. On July 23, Ms. Deibler took a client to her home but did not obtain the prior approval she knew was required. She had initially intended to take the client out for dinner. However, she got take-out food and took the client to her home so the client could see her cat. Ms. Deibler spent the entire shift at her home with the resident. Ms. Deibler's boyfriend was also present for a portion of the evening. It was the boyfriend who drove the client home that evening in Ms. Deibler's car with Ms. Deibler present. The boyfriend was not an employee of CCI and, therefore, had not undergone the scrutiny an employee would have undergone in order to work with and transport CCI clients.

Ms. Deibler was scheduled to work from 4:00 p.m. until 11:30 p.m. on July 23. She had written these hours on her time sheet which was submitted on July 21. When she reported for work on July 23, she discovered that one of her clients was not present. She could have performed other duties to make up the lost hours but did not. She did not, on July 23, notify anyone that her time card needed to be changed. She did not notify anyone of needed changes on the morning of July 25, her next scheduled work date. The discrepancy was brought to her attention by the employer.

A coworker reported to the employer that Ms. Deibler had told her she consumed alcohol while on duty on July 23. The same coworker indicated to the employer that she had smelled alcohol on Ms. Deibler's breath when she returned the client home on the evening of July 23. The coworker did not participate in the hearing and the employer did not offer any written statement from the coworker. Ms. Deibler was suspended on July 27 and notified of her discharge on or about August 24, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Deibler was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer gave several reasons for the discharge. The allegation that Ms. Deibler was drinking alcohol while on duty has not been established to the satisfaction of the administrative law judge. Although there was false information on Ms. Deibler's time card, the time card had already been submitted based on hours she anticipated working on July 23. The time card was not falsified at the time it was submitted.

Ms. Deibler's conduct in having the client in her home without prior approval was contrary to the employer's interests and standards. Ms. Deibler knew she was to obtain prior approval before taking the client home as she had followed this procedure in the past. The employer had the right to make sure that all activities engaged in by the client were for the benefit of the client. Where a staff member spends her entire shift with the client in the staff member's home, a serious question arises as to whether the visit was to benefit the client or the staff person. Without some type of supervisory oversight, a staff member could simply pick up a client and go home and perform personal activities while being paid by the employer.

Ms. Deibler's conduct in allowing a non-employee to drive the client home was contrary to the employer's interests. The employer takes steps to make sure that the individuals they employ have good driving records and that they do not have backgrounds that would be incompatible with working with CCI clients. The employer had no opportunity to determine if Ms. Deibler's boyfriend had a good driving record or if he had a background such that would jeopardize the safety and well-being of the client. Not only did this individual drive the client home, he was also present in Ms. Deibler's home with her and the client.

The above matters appear to have been isolated instances in Ms. Deibler's overall work history with CCI. However, given the employer's clientele, the administrative law judge considers them sufficiently egregious as to constitute disqualifying misconduct. Given the employer's client base, a higher degree of responsibility would be required from staff as the clients are less able to protect themselves given their physical and/or mental status. Ms. Deibler's conduct in putting her own agenda ahead of the client constituted disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated August 31, 2004, reference 01, is hereby affirmed. Ms. Deibler was discharged for disqualifying 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 job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/b