

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

OMAIMA O ABDALLA
Claimant

APPEAL 15A-UI-11176-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSTEMS UNLIMITED INC
Employer

**OC: 09/13/15
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 5, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on October 21, 2015. The claimant participated personally with observer, Imad Youssif. The employer participated through Jenny O'Brien, human resources manager. Employer Exhibits One through Four were admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a lead direct support professional and was separated from employment on September 16, 2015, when she was discharged.

At the time of hire, the claimant submitted an application for employment (Employer Exhibit One). On page three of the application, was a section titled "conviction reporting". Three boxes were available to be marked, with instructions to "check all statements that apply." The claimant checked the box saying "I have never been convicted of a crime in this or any other state. Please include deferred judgments." There was also a box with an option saying, "I have convicted of, or found guilty of: _____." The claimant did not check this box, but had been convicted of theft in March 2012. The claimant was arrested again (and later convicted) of theft on October 10, 2012, between the time of her application and hire.

Below the checked boxes was additional verbiage that stated:

If I become an employee, I agree to notify the Agency of any previous criminal convictions and understand that depending upon the nature of the offense, my employment may be terminated... The post-employment discovery of conviction information not provided here will subject me to the disciplinary policy. This will likely result in termination of my employment.

In 2014, the employer also introduced new policies that provided if an employee is convicted of a crime after employment begins, they have to inform the employer within 48 hours of the conviction (Employer Exhibit Two.) This new policy was provided to employees, but the employer was unsure if the claimant received a copy of it.

The final incident occurred when the employer was informed that the claimant had theft convictions. The employer initiated an investigation and ran a background check. The claimant had three convictions for theft, including March 2012, October 2012 (the month the claimant was hired) and May 2013. The claimant never disclosed any of the arrests or convictions, and explicitly stated she did not have any conviction, when asked on the application. Given the nature of the employer's services, the claimant would not have hired the claimant knowing she had a theft conviction, and would not have retained employment, knowing she had access to a vulnerable adult population and their assets.

The claimant testified at the hearing she did not understand what she was signing as an explanation for not disclosing any of the three theft arrests and convictions, nor was she aware of the employer's new policy of disclosing convictions after hired.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer serves a population of vulnerable adults, as well as has access to their financial accounts. In some cases, the employer asserted that the claimant may even have access to be a signer on financial accounts for the individuals served.

At issue first, is whether the claimant engaged in deliberate falsification by omitting the March 2012 conviction for theft. The claimant knew she had been arrested and convicted for a crime, in this case, theft. She placed a check mark in the box saying she had no convictions. She further signed below the box saying she knew she could be fired if convictions were not disclosed and later discovered. Based on the March 2012 conviction, there was no confusion or misunderstanding as to whether the claimant should have disclosed it. The claimant alleged she did not understand what she signed for during her employment application. At no time during the application process, did the claimant request clarification, or assistance, by way of the employer, or a personal family member or friend, in completing the application. In addition, the claimant demonstrated at the hearing an ability to comprehend and respond to complex questions. In addition, when an interpreter was offered to the claimant, she insisted she was comfortable proceeding in the hearing with English. The claimant's testimony is not credible, but rather the credible evidence establishes the claimant willfully evaded her employer when she marked "no" in response to whether she had a conviction, which was for theft, prior to hire.

The next issue is whether the claimant's falsification put the employer at jeopardy. The employer serves vulnerable adults and the claimant had access to their assets including finances. The employer reasonably established that a person who has been convicted for theft

(and continues to commit crimes amounting to theft) expose the employer and its vulnerable adult population to serious potential harm. Had the employer been aware, she would not have been hired.

Based on the evidence presented, the administrative law judge concludes that the claimant intentionally falsified her job application when failing to notify her employer of her March 2012 conviction for theft, and subsequent convictions for theft while still employed. Even without taking into consideration the 2014 policy which required the claimant to report convictions after hire, the claimant committed misconduct. The additional convictions for theft substantiate claimant's pattern of dishonest behavior, which is contrary to the best interests of the employer. The employer has met its burden of proof to establish the claimant's conduct was disqualifying job-related misconduct. The claimant knew or should have known her conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer has a right to expect of its employees. Therefore, benefits are denied.

DECISION:

The October 5, 2015, (reference 01) unemployment insurance decision is affirmed. 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/pjs