

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

JEAN L JACKSON
432½ - 10TH AVE S
CLINTON IA 52732

COMMUNITY CARE INC
1611 – 330TH AVE
CHARLOTTE IA 52731

Appeal Number: 04A- UCX-00018-SWT
OC: 10/10/04 R: 04
Claimant: Respondent (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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 3, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 6, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Bill Rose participated in the hearing on behalf of the employer with a witness, Dave Smith. Exhibits One through Four and A were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked part time for the employer as a rehabilitation associate from January 20, 2002 to October 13, 2004. She was off work during that period serving in the military and returned to work for the employer on June 13, 2004. The employer provides services to individuals with mental disabilities. The claimant was informed and understood that under the

employer's work rules, dishonesty of any kind, including theft from a client, was grounds for discharge.

On October 12, 2004, the claimant took a client out on an evening outing in the community that included a shopping trip to Wal-Mart. Before going to Wal-Mart, the claimant stopped at an ATM; the client left the car to get some cash from the ATM, and the client withdrew three \$20.00 bills and put them in his wallet. While at Wal-Mart, the client purchased items totaling \$9.57 and paid for them with \$10.00 in cash that he had in his wallet before going to the ATM. The store clerk gave the client the change and the claimant the receipt. After putting the change in the coin compartment in the wallet, the client handed the claimant the wallet to put the receipt in it. As she was doing this, the change fell out because the coin compartment was not closed. The claimant picked up the change, put it back in the wallet, and handed the wallet back to the client.

When the client got out of the car at his house, he noticed that he had dropped his wallet on the floor of the car. The client has a habit of playing with his wallet and the claimant had noticed him playing with it in the car. He retrieved the wallet, and the claimant accompanied him inside because the house was dark and the client's parents were not home. While in the house, the client was looking for a greeting card. The claimant suggested that it might be in his room and advised him to look for it there. She went upstairs to his room because she and the client had talked about working on cleaning his room the next day. She expected him to go up there with her, but when he did not come up to the room, she went back downstairs to find out what he was doing. She asked him whether he wanted her to stay until his parents got home. He told her that she did not need to stay so she left.

The client's parents returned home about 15 minutes later. The client had checked his wallet and noticed there was \$20.00 missing. He reported this to his father and mentioned that the claimant had gone up to his room. The father went up to the room and believed there was some change missing from a change jar the client had in his room. The father reported to management his suspicions that the claimant taken the \$20.00 from the client and change from the client's room. After an investigation, the employer discharged the claimant on October 13, 2004, for theft from the client.

The claimant did not take the \$20.00 or the change from the client's room.

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 (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 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 claimant testified credibly that she did not take the money from the client. She is the only participant in the hearing with personal knowledge of what took place on October 12. The employer's evidence of what took place was hearsay circumstantial evidence from individuals who were not under oath or present at the hearing to be questioned. There are other reasonable explanations for the missing \$20.00 bill; for example, that it was lost at some point during the evening. The evidence that there was change missing from the jar was based on the father's observation "days before that the jar was full."

The employer has failed to meet its burden of proving by the preponderance of the evidence that the claimant committed theft, which was the basis for the discharge.

DECISION:

The unemployment insurance decision dated November 3, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/b