

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VAUNCILE M RUBY**  
Claimant

**APPEAL NO. 10A-UI-11298-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HANDICAPPED DEVELOPMENT CENTER**  
Employer

**OC: 07/04/10**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Handicapped Development Center (HDC), filed an appeal from a decision dated August 2, 2010, reference 01. The decision allowed benefits to the claimant, Vauncile Ruby. After due notice was issued, a hearing was held by telephone conference call on September 29, 2010. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Assistant Program Director Diana Hamm and Program Director Courtney Brankovic observed the proceedings but did not offer testimony.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Vauncile Ruby was employed by HDC from April 21, 2008 until July 1, 2010 as a full-time residential counselor. She had received a copy of the employee handbook on April 21, 2008, which set out the policies and procedures for interaction with clients. Ms. Ruby had received written warnings for failing to report her absences in a timely manner, failing to attend a mandatory in service meeting and was placed on probation May 4, 2010, and told her job was in jeopardy if she had any other incidents of failing to follow company policy.

On June 29, 2010, the guardian of one of Ms. Ruby's clients contacted Assistant Program Director Diana Hamm to report that a large screen TV was missing from the residence. It belonged to the guardian who had stored it in the basement of the residence. It was discovered missing on June 29, 2010, by the guardian when she visited the residence. There had been a burglary at the residence on June 2, 2010, and the guardian reported Ms. Ruby had admitted to being responsible for the burglary because she had not locked the front door when she left at the end of her shift at 8:00 a.m. on June 2, 2010.

The report from the guardian prompted an investigation by Ms. Hamm. She discovered the claimant had not been handling the residents' personal funds as required. The residents each have a bank account. The counselors withdraw the money from the bank accounts and place

the cash in envelopes for each resident, which are kept in a locked drawer or cabinet. When a resident needs money the counselor takes it out of that envelope, writes a receipt to indicate how much money was withdrawn, and is to accompany the resident on any shopping to make sure store receipts are given to account for all expenditures. Ms. Ruby was not doing this, only writing a receipt for the amount of money given to the resident.

In addition, the guardian told Ms. Hamm that Ms. Ruby had asked the guardian for additional funds for that particular resident amounting to several hundred dollars over the course of several months. There were no records or receipts to track where this additional money was spent. Additional funds are not to be solicited from a resident's family or guardian without prior approval from the case manager and the claimant had not received such authorization

The employer's policy is "zero tolerance" for theft or misallocation of client funds. Discharge will occur immediately for any violation. Ms. Ruby was questioned on July 1, 2010, by Ms. Hamm, and she admitted to asking for additional money from the guardian but could not explain why she did not track the money with receipts and sales slips. She also offered no explanation for not having the sales receipts for purchases made by the residents with the money taken from their cash envelopes. She was discharged at that time by Ms. Hamm.

Vauncile Ruby has received unemployment benefits since filing a claim with an effective date of July 4, 2010.

#### **REASONING AND CONCLUSIONS OF 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.

The claimant was discharged for misappropriation of client funds. As a counselor she was to account for the spending by the clients with sales receipts and she failed to do this. In addition, her solicitation of additional funds from a guardian was done without approval from the case manager. Both of these are violations of known company policy. Whether or not she actually took any of the money for her own use is beside the point. By failing to have sales receipts to show where and how the money was spent, it exposes the employer to the appearance of substantial wrongdoing and herself to allegations of fraud or theft.

The employer has the obligation to provide appropriate care and an environment for all residents that is free from any appearance of wrongdoing. The claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of August 2, 2010, reference 01, is reversed. Vauncile Ruby is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

---

Bonny G. Hendricksmeier  
Administrative Law Judge

---

Decision Dated and Mailed

bgh/kjw