

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAIRE B LECROY
Claimant

APPEAL NO. 11A-UI-14911-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE EASTER SEAL SOCIETY OF IOWA INC
Employer

OC: 10/16/11
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The Easter Seal Society of Iowa, Inc. filed a timely appeal from a representative's decision dated November 9, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on December 13, 2011. The claimant participated. The employer participated by Ms. Sherri Nielsen, president/CEO, and Ms. Sara Hardy, human resource generalist.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds, Claire Lecroy was employed by the Easter Seal Society of Iowa, Inc. from June 13, 2008, until October 21, 2011, when she was discharged from employment. Ms. Lecroy held the position of director of camping and respite services. The claimant was employed on a full-time basis and was paid by salary. Her immediate supervisor was the facility's president/CEO, Sherri Nielsen.

Ms. Lecroy was discharged after warning based upon repetitive failure to follow-up or answer telephone calls and e-mails in a timely manner. These matters had been brought to Ms. Lecroy's attention on numerous occasions by her supervisor; however, the claimant's failure to timely respond to or follow-up on e-mails on telephone calls continued.

The final incident that caused the claimant's discharge took place when a part-time summer nurse had not been paid by Ms. Lecroy for the services that she had performed approximately two months previously and the claimant had stated to the part-time nurse that the delay, in effect, had been occasioned by Ms. Nielsen's failure to act on the matter. The employer concluded the statement was patently untrue, as the claimant had been charged with the responsibility of determining pay due and reconciling the pay issue with the part-time worker in question.

It is the claimant's position that she was unable to quickly follow up on e-mails and telephone calls due to the press of other obligations and that the part-time nurse in question had not been paid because there were significant questions regarding the number of hours she had worked.

REASONING AND CONCLUSIONS OF LAW:

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this matter, the evidence in the record establishes that Ms. Lecroy had the ability to perform the duties of her job but had not responded to repeated warnings to be responsive to e-mails and calls and to quickly return the calls or resolve the reasons for the communications. The claimant had been repeatedly warned about these matters, but her performance had not improved.

The final decision to terminate the claimant took place when the employer reasonably concluded that Ms. Lecroy had made an untruthful statement to a former part-time employee about the reason for the organization's failure to make prompt payment for services that had been performed approximately two months before. The evidence establishes that Ms. Lecroy had been instructed to determine the hours payable and to provide payment to the former part-time nurse but had not done so. The delay in paying the part-time nurse was not occasioned by any directives given by Ms. Nielsen, and the organization's CEO was reasonable in her conclusion that Ms. Lecroy had made false statements blaming the delay on the president/CEO instead of resolving the matter or taking the blame herself.

The administrative law judge concludes, based upon the evidence in the record, that the employer has sustained its burden of proof in establishing that the claimant's conduct and statements showed a willful disregard for the employer's interests and standards of behavior and thus were disqualifying under the provisions of the Iowa Employment Security Law.

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 issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

DECISION:

The representative's decision dated November 9, 2011, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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