

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE MICHALEC
Claimant

APPEAL NO. 10A-UI-08115-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NCS PEARSON INC
Employer

OC: 05/02/10
Claimant: Respondent (2-R)

Section 96.(2)a – Discharge

STATEMENT OF THE CASE:

The employer, NCS Pearson, filed an appeal from a decision dated May 24, 2010, reference 01. The decision allowed benefits to the claimant, Christine Michalec. After due notice was issued a hearing was held by telephone conference call on July 22, 2010. The claimant participated on her own behalf. The employer participated by Human Resources Director Jill Hugunin, Production Coordinator Laonna Schesser and was represented by Assistant Corporate Counsel Andrew Coffey. Exhibits One, A, B, C and D were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Christine Michalec was employed by NCS Pearson from September 27, 2004 until May 3, 2010 as a full-time human resources generalist. In April 2010 an Iowa City, Iowa, police detective requested confirmation of employment on Anthony Postley. His name had come up in an investigation of identity theft of another employee, Tray Hulsebus. He is the father of two of the claimant's children.

The employer checked Mr. Postley's file and found some irregularities. He was paid for hours worked beyond the time his temporary assignment ended, and there was no supporting documentation such as time sheets for those hours.

An investigation was started and at least one other employee file was missing critical information and supporting documentation for wages paid. Ms. Michalec was questioned about it and asked if she could find supporting documents for these wages. She could not. On April 28, 2010, she was suspended pending further investigation.

The employer continued to search for supporting documentation of the additional hours worked but could find nothing. It was discovered Mr. Postley shared an address of record with the claimant. It was also discovered 19 temporary employees shared an address of record with the

claimant. The employer further learned these 19 employees were paid "manually." Temporary workers may elect to have wages deposited directly into a bank account or be paid directly in the form of a pre-loaded magnetic "swipe" card which could be redeemed from an ATM machine or vendor. The claimant was the person who had changed the mailing addresses in the system, as verified by her identification code used to access the system, and she also processed all of the manual pay cards.

On May 3, 2010, the claimant was notified by telephone she was discharged.

Christine Michalec has received unemployment benefits since filing a claim with an effective date of May 2, 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 denied all culpability and wrong doing which the employer cited as grounds for discharge. She believed she was fired for falsifying the employment of her ex boyfriend and at least one other. This is not the case. She was discharged for altering records and creating manual pay cards for employees without sufficient documentation they actually worked those hours. The written statements and Mr. Postley's personnel file she submitted verify only that the employees in question were actually hired at some point and did not address the question of the undocumented work hours for which they received pay. The e-mail document she submitted

allegedly from Production Coordinator Laonna Schesser about hours worked by Mr. Postley was renounced by Ms. Schesser as being false and that she never sent it.

The circumstantial evidence submitted is sufficient to rebut most of the claimant's assertions. She claimed she was "framed" by Ms. Hulsebus because of the identify theft issue. But the entire investigation by the employer was only prompted by the police investigator asking for verification of Mr. Postley's employment. This assertion is also lacking in credibility as Ms. Michalec did not explain how someone else could have used her access code to change the addresses of the temporary workers.

The record establishes the claimant was discharged for misconduct. She altered records and falsified payroll information and may have committed theft. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. 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 May 24, 2010, reference 01, is reversed. Christine Michalec 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/pjs