

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TARA R JAMISON
Claimant

APPEAL NO. 13A-UI-11459-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSTEMS UNLIMITED INC
Employer

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

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 8, 2013, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 5, 2013. Claimant participated. Employer participated through human resource specialist, Jenny O'Brien. Employer's Exhibits 1 through 7 were received.

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: Claimant was employed part time as a direct support professional from October 17, 2010, and was separated from employment on September 17, 2013. October 2012 post-hire conviction for third degree theft, discovered on September 6 when the Johnson County attorney contacted payroll about her wage garnishments and indicated there was a warrant out for her arrest. The employer ran a background check on September 11, and called her in for a meeting. Her job application includes a statement that the prospective employee will self-report any criminal convictions. (Employer's Exhibit 1) She self-reported and Operating While Intoxicated (OWI) in March 2013 but did not report the theft conviction. Driving and handling finances for dependent adults are part of her job description. (Employer's Exhibit 5)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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 employer has presented substantial and credible evidence that claimant failed to notify the employer of her conviction and deferred judgment on the October 2012, theft charge in violation of the agreement she signed on her job application. Although claimant believed she would not have to report a deferred judgment, that legal tool is not used for those who are not convicted or do not admit the conduct for which they are charged. Claimant was reasonably aware in March 2013, that she needed to report criminal actions against her when the employer addressed her OWI arrest. Her failure to divulge the theft conviction then or at any time until confronted in September 2013, amounted to disqualifying misconduct. Benefits are denied.

DECISION:

The October 8, 2013, (reference 01) 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css