

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDICE C LESHORE
Claimant

APPEAL NO. 17A-UI-02316-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMMESA INC
Employer

OC: 02/05/17
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a -- Discharge
Iowa Code § 96.3(7) -- Benefit Overpayment

STATEMENT OF THE CASE:

Ammesa, Inc., the employer, filed a timely appeal from a representative's decision dated February 24, 2017, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 23, 2017. Claimant participated. The employer participated by Ms. Mitsi Willis, General Manager; Pam Rico, Operations Manager; and Ms. Diane Ricketts-McCool, President/CEO. Employer's Exhibits 1, 2, and 3 were admitted into the hearing record. Exhibits 4 and 5 were not received because these exhibits were not submitted in sufficient time for the claimant to receive them.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Candice LeShoure was employed by Ammesa, Inc., d/b/a Professional Touch Cleaning Services, from February 29, 2016 until August 26, 2016, when she was discharged from employment. Ms. LeShoure was employed as a part-time cleaner for the company and was paid by the hour. Her immediate supervisor was Pam Rico.

Ms. LeShoure was discharged on August 26, 2016, after the employer reasonably concluded that Ms. LeShoure had misreported her working hours for the evening of August 17, 2016.

Ms. LeShoure had agreed to a three-hour work assignment at "Tech-Team," a client location, for the evening of August 17, 2016. Claimant was familiar with the work location because she had been assigned working hours at that location for some day time hours. On the evening of August 17, 2016, Ms. LeShoure did not follow the company's usual procedure of verifying her arrival and leaving time by calling the company using the client location telephone to enter her arrival and leaving times, but instead verbally reported her hours as 7:30 p.m. to 10:00 p.m. that evening. Although the claimant had not followed the required procedure by calling in from the

client location telephone at the beginning and end of her work that evening, the company did not initially question the hours that Ms. LeShoure had reported. Later, after a question was raised about how many hours the claimant worked that night, the employer reviewed internal security tapes at the employer facility. The security tapes showed Ms. LeShoure entering the employee area on the evening of August 17, 2016 at 9:40 p.m. to pick up a key for the location where she was expected to work and showed her returning the key to the Professional Touch Cleaning Services, Inc. business location at 10:39 p.m. the same night.

When confronted about the discrepancy, Ms. LeShoure initially claimed that the 2 ½ hours' of work that she had claimed was correct, but when shown the security tapes of her arrival and leaving on the evening in question, Ms. LeShoure seemed to agree that she had only worked a short period of time and not the hours she had reported.

Because the claimant had been previously specifically warned on June 23, 2016 for falsifying her work times, the decision was made to terminate Ms. LeShoure from her employment. The claimant had been warned that further failure to accurately and properly report her work hours could result in immediate dismissal from employment.

It is the claimant's position that she had only been instructed to work for one and half hours on the night of August 17, 2016 by Ms. Rico, the company's operations manager. It is the claimant's further position that she was discharged for another incident that had taken place at a different client location that day. The claimant asserts that the employer had received no complaint about the number of hours that she had worked on the night of August 17, 2016 by the client and that her discharge from employment was based solely upon "discrimination."

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct "must be substantial" to justify the denial of unemployment benefits. "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). 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 Ct. App. 1992).

In the case at hand, the evidence in the record establishes that the claimant had agreed to perform additional work for the employer at a cleaning location. The claimant did not follow the required procedure by calling in from the client location at the beginning and the end of her work there, the normal method used to establish the number of hours worked at a location. The employer gave the claimant the benefit of the doubt until the client later complained about the amount of time that Ms. LeShoure was at the location. A review of the security camera tapes showed the claimant coming to the employer's facility to obtain a key and later return the key within one hour's time. Because the claimant had claimed two and one half hours worked at the client location for that evening, the employer reasonably concluded that she had intentionally misreported her hours. Because the claimant had been specifically warned for the same offense on June 23, 2016, the claimant was discharged from employment.

The administrative law judge concludes that the employer sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. The employer's witness testified clearly and specifically regarding the way the claimant was falsifying the hours she worked and her observations on the security tapes. Accordingly, the claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether the claimant has been overpaid unemployment insurance benefits and whether the claimant is liable to repay the overpayment is remanded to the claims division for investigation and determination.

DECISION:

The representative's decision dated February 24, 2017, reference 02, is reversed. Claimant was discharged for misconduct. 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 and is otherwise eligible. The issue of whether the claimant has been overpaid unemployment insurance benefits is remanded to the claims division for investigation and determination.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

scn/rvs