

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTHANN KOHL-FUHS
Claimant

APPEAL NO. 10A-UI-10572-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESCO INDUSTRIES
Employer

OC: 06/06/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Marthann Kohl-Fuhs, filed an appeal from a decision dated July 19, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 16, 2010. The claimant participated on her own behalf and was represented by Jay Smith. The employer, Wesco, participated by Executive Director Amanda Breuer. Exhibit One was 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:

Marthann Kohl-Fuhs was employed by Wesco from May 9, 2006 until June 7, 2010 as a full-time community support person. She had received warnings for unprofessional conduct on October 16 and December 29, 2009, and a final warning and three-day suspension on January 29, 2010. The unprofessional conduct was largely in the form of electronic written communication to staff and supervisors. She was warned her job was in jeopardy.

On June 4, 2010, a Department of Human Services (DHS) case worker notified Program Director Wendy Mosier she had received a letter from Ms. Kohl-Fuhs at her home address. It mentioned three of the employer's clients, one of whom was not on the case workers' case load. This was a violation of the confidentiality provisions regarding Wesco's clients. The claimant considered the letter to be a report of abuse of the residents, but the contents were merely a long rambling complaint about the décor in the house being "girly" and other problems with the decorations. There was nothing in the letter stating she wanted the case worker to refer the matter to the proper DHS office for investigation of abuse.

Around that same time, the local Hy-Vee pharmacy notified the employer it had received a letter from the claimant complaining about the employer and alleged medication errors, which were actually only spelling errors on a doctor's name and alleged Wesco was not addressing her

concerns. She felt this was potential abuse of clients but did not mention any of the medication errors in the letter to the case worker and the letter to Hy-Vee did not ask them to refer the matter to any authority for investigation. Then Supervisor Diana Maulsky notified management of an e-mail from Ms. Kohl-Fuhs in which she had written she needed "f---g back up" from time to time.

These matters were referred to Executive Director Amanda Breuer on June 4, 2010. The decision was made to discharge the claimant and she was notified by phone on June 7, 2010, when she refused to come into the facility to discuss the matter in person.

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 had been advised her job was in jeopardy as a result of her unprofessional communications with supervisors and staff. She inappropriately sent information to a DHS caseworker, allegedly to report abuse, but no one reading that letter could consider it anything other than a rambling complaint about Wesco. The letter to Hy-Vee was again a lot of nit-picking about spelling errors and acrimonious statements from the claimant about the employer. It was highly inappropriate to involve the pharmacy in her dispute with the employer and again there was no request to report abuse to a government agency.

The claimant preferred to send the letter to the pharmacy and the case worker rather than going to the phone book and calling her local office of DHS to request information about how to lodge a formal complaint of abuse.

The claimant's long history of mailing and e-mailing complaints to others is unprofessional. Her last comment to her supervisor was insubordinate and accusatory. Her alleged concerns about the residents appear to be merely an excuse to embarrass the employer and an attempt to recruit others to help her carry on her long-running dispute with supervisors and staff. She violated HIPPA provisions and conducted herself in such a way as to cause substantial embarrassment to the employer in the community. 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.

DECISION:

The representative's decision of July 19, 2010, reference 01, is affirmed. Marthann Kohl-Fuhs is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw