

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY L HIGUERA
Claimant

APPEAL NO. 09A-UI-17382-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC
Employer

OC: 03/22/09
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Community Care, filed an appeal from a decision dated November 6, 2009, reference 03. The decision allowed benefits to the claimant, Tracy Higuera. After due notice was issued a hearing was held by telephone conference call on December 31, 2009. The claimant participated on her own behalf and with witness Anna Sneed. The employer participated by SCL Supervisor Ashley Spain and Assistant Ginger Pingel. Exhibits One, Two, Three and Four 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:

Tracy Higuera was employed by Community Care, Inc. from May 18, 2009 until October 19, 2009 as a part-time direct support professional. On October 12, 2009, a client told SCL Supervisor Ashley Spain that Ms. Higuera admitted to having a sexual relationship with another client, Nick. Ms. Spain discussed the matter with SCL Director Lisa Wenzel then Ms. Wenzel and Human Resources Director Carol Wells interviewed Ms. Higuera.

She denied having any kind of personal relationship with Nick but did admit she had been in his home outside of work hours and stated she did “nothing she wanted to talk about” while there. She did not know the last time she had been at Nick’s home and also admitted she talked to him on the phone but only to inform him of a change in her schedule and the time she would be visiting with him during work hours. The claimant maintained she always cleared any contact with Nick outside of work hours with a supervisor.

The claimant was suspended and the employer further investigated by talking with another employee, Amy Stitcher. Amy stated Nick had told her Ms. Higuera had been trying to have sexual relations with him and showed her text messages on his phone he said came from the claimant. He also asserted the claimant got jealous when he talked with other women.

The employer attempted to meet with the claimant on October 13 and 14, 2009, but she cancelled both meetings. They eventually met on October 19, 2009, at which time the claimant was fired.

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.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The claimant denied any wrongdoing. The employer has failed to provide anything except hearsay evidence regarding the allegations of inappropriate conduct against the claimant to rebut this denial. No statement or evidence from the clients making the allegations or any copies of the text messages allegedly

sent by the claimant were presented. Without more direct evidence the administrative law judge cannot conclude the employer has met its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of November 6, 2009, reference 03, is affirmed. Tracy Higuera is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs