



RIVER VALLEY LAW

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FOR IMMEDIATE RELEASE

September 21, 2023

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UPDATE ON THE FORMER FAIR MEADOW NURSING HOME AND ASSISTED LIVING ADMINISTRATOR, ANGELA LEITING, CITY OF FERTILE, ITS MAYOR, DANIEL WILKENS, AND FAIR MEADOW NURSING HOME AND ASSISTED LIVING, ALLEGING SHE WAS UNJUSTLY FIRED FROM HER LONG-TERM ROLE AS THE NURSING HOME'S ADMINISTRATOR.

On July 10, 2023, Angela Leiting was denied Minnesota Unemployment Insurance because the City of Fertile stated Angela Leiting was discharged for employment misconduct. Angela Leiting appealed the determination, and an evidentiary hearing was conducted on Monday, September 18, 2023.

Today, Thursday, September 21, 2023, Attorney Sarah R. Jewell and Angela Leiting received Notice of Decision of the Unemployment Law Judge stating, “because the evidence is insufficient to support a finding of employment misconduct, Leiting is eligible for unemployment benefits.” (Pg. 8, Paragraph 2, Notice of Decision of the Unemployment Law Judge, dated September 21, 2023).

“On June 20, 2023, Angela Leiting was discharged for reasons other than employment misconduct. Leiting is not denied unemployment benefits because of being discharged from employment. Unemployment benefits paid to Angela Leiting will, under Minnesota Statutes Section 268.047, subdivision 1, be charged to the reimbursable account of the City of Fertile, which has elected to reimburse the Minnesota Unemployment Insurance Trust Fund for any unemployment benefits paid to its former employees, regardless of the reasons for separation from employment.” (Pg. 8, Paragraph 3, Notice of Decision of the Unemployment Law Judge, dated September 21, 2023).



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09/21/2023

ANGELA M LEITING



Issue Identification Number: 49750932-2

**NOTICE OF DECISION
OF THE UNEMPLOYMENT LAW JUDGE**

Under Minnesota Statutes 268.105, subdivision 1, the enclosed decision of the Unemployment Law Judge is served on you.

NOTICE TO THE PARTIES: The law of the State of Minnesota at Minnesota Statutes 268.105, subdivision 5a, provides that the findings of fact and decision issued are only for unemployment insurance benefit entitlement purposes and do not affect any other legal or contractual matter.

ALSO MAILED TO:

FAIR MEADOW NURSING HOME, EMPLOYER
Pemberton Law, Employer Attorney

In the Matter of:

Angela Leiting,

Applicant,

AND

**FINDINGS OF FACT
AND DECISION**

CITY OF FERTILE,

Employer.

An evidentiary hearing, under Minnesota Statutes 268.105, subdivision 1, was conducted on Monday, September 18, 2023, as a result of the Applicant 's appeal from a Determination of Ineligibility issued on Monday, July 10, 2023.

ISSUE(S)

Whether the applicant quit or was discharged

Whether the applicant was discharged because of employment misconduct and is ineligible to receive unemployment benefits.

FINDINGS OF FACT

The appeal of Angela Leiting was heard by telephone conference on July 31, 2023, and concluded on September 18, 2023. Leiting appeared personally. City of Fertile appeared by Lisa Liden, City Administrator. The City was represented by legal counsel, Elise Heifort and Abbie Thurmes.

The City of Fertile (the City) operates Fair Meadow Nursing Home (Fair Meadow). Angela Leiting began working at Fair Meadow on November 16, 1998. She was the nursing home administrator and licensed assistant living director. Leiting earned an annual salary of approximately \$120,000.

The Fair Meadow Advisory Board (the Board) manages and operates the nursing home and assisted living facility subject to the authority of the City Council (the Council). The Board and the Administrator have authority to act independently on some issues, while Council approval is required on others.

According to Fair Meadow's personnel policies, management has the exclusive right to manage and control the premises and equipment, select, hire, promote, suspend, dismiss, assign, supervise, and discipline employees, transfer employees within departments and to other departments and other classifications, determine and modify job descriptions, job classifications, and job evaluations.

The City Code also permits the Administrator to "contract and purchase all necessary equipment, apparatus and supplies" without the Council's approval unless an item exceeds \$5,000.

Fair Meadow stores unused nursing home equipment in a garage. Every year, it sold items in a rummage sale to raise money. The money was held in a guild and used to buy things for residents.

Due to the COVID pandemic, in-person sales were discontinued, and Leiting posted items for sale on Facebook Marketplace.

For various business reasons, Leiting occasionally froze employees' vacation leave. Sick leave was never frozen and could still be taken if an employee was ill.

On August 17, 2022, Leiting notified employees that "vacation and sick leave are on hold again for the month of September." Leiting did not intend to include sick leave in the message.

During a Council meeting on April 10, 2023, Leiting was asked about sick time being frozen. Leiting clarified that the message should not have said "sick leave."

In the past, Fair Meadow paid employees monthly. It allowed employees to receive a "mid monthly advance", so they did not have to wait so long for a paycheck. Fair Meadow changed to a bi-weekly payroll in January 2019, and mid-month advances were eliminated.

Employees' paychecks often contained errors. Jenn Derosier, the payroll administrator, corrected errors when brought to her attention. When coding payroll corrections on an employee's earning statement, Derosier used the "mid-month advance" code, which remained in the payroll system.

In 2021, Fair Meadow employees were asked to fill out a survey on job satisfaction during the COVID pandemic. Their main complaint included payroll errors involving call pay because so many shifts were vacant and being filled by others.

To reduce errors, Derosier was instructed to keep a log of payroll corrections, and Leiting was asked to include the information in her monthly report to the Council. Leiting included the information in her report for several months. Her attention to the matter declined over time, and she eventually neglected to address the issue. The Council did not bring the issue to Leiting's attention.

In 2019, a universal worker was on the same wage scale as a dietary aid. In 2021, the position was moved to a higher scale without approval from the Council.

In late 2021, Leiting shifted some employees' responsibilities to meet business needs. She had one employee help with scheduling to fill shifts. Others helped with housekeeping or worked as a CNA.

Fair Meadow's licensure requires a clinical supervisor who is a registered nurse (RN) licensed in Minnesota. An LPN previously filled the roll. Leiting moved Laura, an RN, to the position and raised her wage scale to that of a director of nursing (DON).

Fair Meadow received a federal grant in 2022 to distribute to employees as retention bonuses. The money had to be distributed over the course of six pay periods between January and March 2022. It was up to the facility to determine how the funds would be allocated.

Leiting initially determined that each hourly employee would receive an additional \$2.50 per hour during that period, and managers would receive \$200 more each pay period. She informed the Council of her objective, but it was not discussed further.

Leiting adjusted the numbers after a closer examination of the funding and employee's schedules. Hourly employees received \$2.50 per hour more for the first three pay periods and \$5 per hour more during the last three pay periods. Managers received an additional \$200 for the first three pay periods and then \$400 for the next two pay periods. The remaining money was evenly distributed among managers for the final week of the grant. This amounted to an additional \$315 for each manager.

According to the Fair Meadow personnel policy, the normal work week is 40 hours per week or 173 hours per month for full-time employment. Salaried employees "will receive compensatory time off at a rate of time and a half for any necessary overtime hours worked." All other employees are paid overtime at a rate of time and a half over 40 hours in a week.

Staff members can earn up to 192 hours of vacation time. Employees are allowed to cash a total of 40 vacation hours twice per year for a total of 80 hours.

In 2022, many managers were allowed to cash out more than 40 hours at a time and more than 80 hours total. Neither Derosier nor Leiting recognized the error.

Managers were also allowed to use comp time in place of vacation. During a two-week vacation in 2022, Leiting used 24 hours of vacation and 56 hours of comp time.

In early 2023, the City started an investigation after questions arose about Fair Meadow's payroll reports.

On June 20, 2023, Leiting was called into a meeting with Lisa Liden, the city administrator, Dan Wilkens, the mayor, and council members Mary Kiefert, Todd Wise, and Amanda Bosman.

Leiting received seven packets of documents for review addressing her performance. Each packet addressed separate issues. An eighth packet, not given to Leiting, contained a prepared letter of termination and a letter of resignation. The letter of termination was dated June 20, 2023, and stated, "This letter is to inform you that your employment at Fair Meadow Nursing Home is terminated immediately" for "serious financial mismanagement" of resources.

The parties discussed each packet. The Council accused Leiting of improperly disposing of city property, making false statements to the Council, allowing mid-month advances, failing to report payroll adjustments to the Council, creating positions and moving pay scales without authorization, unfairly distributing the retention bonuses, and the improper use of vacation time.

During the meeting, Leiting asked if she was being fired. Councilman Wilson stated, "Yes." Mayor Wilkens told Leiting that she could resign if she wished. If Leiting did not resign, the City intended to present her with the termination letter.

FINDINGS OF FACT CONTINUED IN MEMORANDUM

REASONS FOR DECISION

The Department determined that Leiting was ineligible for unemployment benefits because she quit in anticipation of being discharged. On appeal, Leiting alleges that she was discharged at the meeting on June 20, 2023.

According to Minnesota Statutes Section 268.095, subdivision 2, a quit from employment occurs when the decision to end the employment, at the time the employment ended, belonged to the employee. On the other hand, a discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity.

The factual findings on this issue are based on Leiting's sworn testimony, which was clear, detailed, sincere, and forthcoming. In addition, Liden's testimony supports Leiting's statements.

It is undisputed that the City had both a resignation letter and a termination letter prepared when it met with Leiting on June 20, 2023. Thus, this clearly was not an ordinary performance review.

It is not convincing that the Council intended to ponder Leiting's employment status further after the meeting. Instead, a preponderance of the evidence established that the Council already made the decision to discharge Leiting. The termination letter was dated June 20, 2023, and effective "immediately." The City simply waited to present Leiting with the termination letter until after it gave her the option to resign.

The finding is further supported by the fact that Wilson answered "Yes," when Leiting asked if she was being terminated. In documents submitted prior to the hearing, the employer acknowledged that Wilkens told Leiting that she had the option to resign and if not, she "would likely be terminated." During her testimony, Liden reluctantly acknowledged the ultimatum presented to Leiting.

Despite labeling Leiting's separation as a "resignation," Wilkens' words and actions would lead a reasonable employee to believe that she was not being given the option to continue her employment. Thus, Leiting was discharged.

According to Minnesota Statutes Section 268.095, subdivision 4, an applicant who was discharged from employment is ineligible for all unemployment benefits only if the discharge occurred because of employment misconduct.

Employment misconduct is defined under Minnesota Statutes Section 268.095, subdivision 6(a), as any intentional, negligent, or indifferent conduct, on or off the job that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.

Conduct that was a consequence of the applicant's mental illness or impairment, inefficiency, inadvertence, simple unsatisfactory conduct, conduct an average reasonable employee would have engaged in under the circumstances, poor performance because of inability or incapacity, good faith errors in judgment if judgment was required, or absence because of illness or injury with proper notice to the employer, are not employment misconduct.

The City contends that Leiting took several actions in 2021 and 2022 that were not within her authority. It also accuses her of "serious financial mismanagement" of the nursing home's resources. However, a preponderance of the evidence does not support a finding of employment misconduct in this case.

The factual findings on this issue are based primarily on the seven packets the City presented to Leiting at the June 20, 2023, meeting. The packets outline Leiting's transgressions and include documentation to defend the City's allegations.

Leiting responded to each allegation in a letter to the Council the following week. Her response, coupled with her testimony, was detailed and sincere. Leiting provided rational explanations for her actions. The reasonableness of her actions is measured by the circumstances Fair Meadow and every other nursing home in the country faced during the COVID pandemic.

Here, the City Code occasionally conflicts with Fair Meadow's personnel policies. For example, the Code states that the City has authority over public buildings and property, and the Board must recommend the disposition of assets to the Council. On the other hand, personnel policies state that management has the right to manage and control the premises and equipment.

Since Leiting was permitted to authorize purchases, she reasonably believed that she could sell unused equipment to benefit the residents. Especially since Fair Meadow had been in the practice of having an annual rummage sale.

The City's accusation that Leiting created positions and altered pay scales without authorization is unfounded. Fair Meadow personnel policies give management the exclusive right and responsibility to select, hire, promote, suspend, dismiss, assign, supervise, and discipline employees, transfer employees within departments and to other departments and other classifications, determine and modify job descriptions, job classifications, and job evaluations.

Although the City disagreed with Leiting's allocation of the retention bonuses, especially when it came to management staff, it does not allege that she was unauthorized to disburse the grant. Nursing home were stretched to their limits during the pandemic, and Leiting reasonably concluded that management staff was worthy of a bonus.

There appears to be confusion over whether salaried employees received comp time, as the personnel policies include it, but Liden testified otherwise. Under the circumstances, Leiting's use of comp time did not violate any policies of which she was aware.

Leiting admits that she could have done a better job monitoring payroll errors, which were prevalent during the pandemic, but she focused her attention on what she sincerely believed to be more pressing issues.

Leiting was a dedicated employee for decades and appeared to always have the residents' best interests in mind. She cared about her employees, who worked as a team to persist through the pandemic. Leiting's actions were not intentional, negligent, or indifferent.

Because the evidence is insufficient to support a finding of employment misconduct, Leiting is eligible for unemployment benefits if all other conditions of eligibility are met.

DECISION

On June 20, 2023, Angela Leiting was discharged for reasons other than employment misconduct. Leiting is not denied unemployment benefits because of being discharged from the employment. Unemployment benefits paid to Angela Leiting will, under Minnesota Statutes Section 268.047, subdivision 1, be charged to the reimbursable account of the City of Fertile, which has elected to reimburse the Minnesota Unemployment Insurance Trust Fund for any unemployment benefits paid to its former employees, regardless of the reasons for separation from employment.

Dated: Thursday, September 21, 2023 Unemployment Law Judge

MEMORANDUM:

FINDINGS OF FACT CONTINUED

Leiting expressed her intention to resign. Wilkens asked Leiting to sign the prepared resignation letter, but she refused.

Leiting established an unemployment benefit account effective June 25, 2023.

To review your account log in to www.uimn.org

If you have any questions about this decision, you may contact the Unemployment Insurance Program. You must have your Issue Identification Number available when you call.

It is important for you to request benefits according to your assigned schedule during the reconsideration process. If the decision is in your favor, you will be paid for weeks that you have properly requested, provided all the other eligibility requirements are met.

REQUEST FOR RECONSIDERATION

If you believe this decision is factually or legally incorrect, you may request the unemployment law judge to reconsider the decision. You may do this by logging in to your account at www.uimn.org,

by fax, or by mail (fax number and address are listed at the bottom of this page). A request for reconsideration must include the issue identification number.

Under Minnesota Statute 268.105, subdivision 2, this decision will be final unless a request for reconsideration is filed with the unemployment law judge on or before Wednesday, October 11, 2023 .

This decision allows you to be paid unemployment benefits if you are otherwise eligible. CITY OF FERTILE has the right to request reconsideration within 20 days from the date this decision was mailed.