

**STATE OF MINNESOTA
IN COURT OF APPEALS**



Krista Santillana, Relator

Case: Economic Security

v.

**Appellate Court Case Number:
A10-327**

CENTRAL MINNESOTA COUNCIL
ON AGING INC, Respondent

and

DEPARTMENT OF ECONOMIC SECURITY
AND ECONOMIC DEVELOPMENT, Respondent

APPELLANT'S BRIEF AND APPENDIX

Krista Santillana, Relator

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

The request for this appeal between Krista Santillana and the Central Minnesota Council on Aging (CMCOA) is for the court to reconsider the statement of aggravated employee misconduct while employed at CMCOA. Employment misconduct is defined under Minnesota Statutes, section 268.095, subdivision 6(a), as intentional, negligent, or indifferent conduct, on or off the job, that displays clearly a serious violation of the standards of behavior the employer has a right to reasonably expect of the employee or a substantial lack of concern for the employment. The Unemployment Law Judge (ULJ) noted, "the preponderance of evidence shows that while Santillana did not volunteer information about the pending investigation, charge and then conviction, neither did she misrepresent or lie about it." ¹ This is the basis for this appeal, because it is in direct conflict with the ULJ's final decision which states, "the Judge has determined that Santillana's misrepresentation during the interview and failure to disclose the pending investigation to Vrolson was material to her employment with CMCOA." ² Ms. Santillana's criminal charges from another employer were the sole basis for her termination from CMCOA and this argument states that the information provided during the interview based on the questions asked were appropriate and factual from Ms. Santillana. There was no misconduct while on the job nor any behavior that would be considered employment misconduct.

Ms. Santillana was employed by CMCOA, for nearly one year with no concerns for her standard of conduct as an employee, no disciplinary action of any kind was noted during her employment. The ULJ heard testimony during the telephone hearing about the interview in what was believed or remembered to be discussed. Ms. Santillana was truthful in questions answered about previous employer, as when asked about her former position at Good Shepherd, Ms. Santillana stated that while on maternity leave was starting to look for part time employment.

¹ See Notice of Decision of the Unemployment Law Judge, (11/06/2009) , p 3.

² See Notice of Decision of the Request for Reconsideration, (01/20/2010), p 5

No further discussion was held related to other reasons for leaving Good Shepherd in relation to being discharged due to pending criminal charges. As noted per transcript from the hearing, Ms. Vrolson stated "and what I recall from that conversation was that it was because she was on maternity, she was on maternity leave at the time of the interview and that she was looking only to work part-time hours and not full time"³ This statement is from Ms. Vrolson's memory relating back to October 2008 when the telephone hearing was in November 2009. It was stated as recollection, and possibly not complete accuracy at the time of the hearing. There was no further discussion of anything related to criminal charges, no paperwork to complete at any time needing to check a certain area for criminal charges. During the telephone hearing it was discussed that CMCOA did not have any policy directly related to disclosure of crimes, or require any further paperwork to be completed related to convictions. At the time of interview and hiring process, Ms. Santillana was not formally charged with any crime and had not received any notification of any proceedings to be aware of, so it was not disclosed due to no factual data to discuss. Also, prior to the time of hiring the CMCOA staff had a responsibility to call Ms. Santillana's former employer at Good Shepherd and ask about employment as well as check references. If this was done, which it was not, then CMCOA would have been notified that Ms. Santillana was no longer working at Good Shepherd and was discharged being unable to be hired back again. Upon review, it is noted that Ms. Vrolson stated that Ms. Santillana did not lie about background check or criminal history on the application per her checkbox on the Exhibit page.⁴ However at the time of Request for Reconsideration, which then denied unemployment benefits, it was stated that Ms. Santillana falsified information during the interview.⁵ Those two statements are in conflict of each other and the decision to deny unemployment benefits was based on the second statement of falsifying information during interview, when prior to that Ms. Vrolson checked the box in Exhibit 5, p 1 noting no falsification.

³ See Transcript of Appeal Hearing, p 14.

⁴ See Departments Exhibits, EX-5, p 1.

⁵ See Notice of Decision of the Request for Reconsideration (01/20/2010) , p. 5.

Ms. Santillana was hired as a Grants Manager and continued to do this work for almost 1 year at CMCOA correctly and with a great ability to learn fast as well as work well with agencies funded through CMCOA. In applying for this position, Ms. Santillana was aware this was a paperwork/desk position, in which there would be no direct contact with clients nor with finances. The duties of this position included being responsible for the checking of the forms sent into CMCOA by the contract funded organizations of CMCOA. This paperwork was checked for accuracy related to the number of services it provided in order to be reimbursed accurately from the Older Americans Act funding. This paperwork did include confidential data of elderly clients with their SS#, address, phone# and Date of Birth, to be entered into a MN State database for all accuracy in reporting all units of service provided. This information was entered into the system by several people and at no time was any data misused. The paperwork that Ms. Santillana also received for checking accuracy of services provided was double checked by another Grants Manager who then works with the Financial Director to discuss payment to the organization based on services provided. At no time was there any access related to the funding of these organizations. Ms. Santillana at no time saw any funds exchange hands by any agencies nor did Ms. Santillana have any access to any funds while at CMCOA.

It is very important to point out to the Court that CMCOA did state they did not have a policy on disclosing criminal charges and that there was no application to be filled out by Ms. Santillana prior to employment. As stated from discussion at the telephone hearing and decision by the ULJ following the telephone hearing "CMCOA was in a position to specifically require Santillana to disclose information about arrests, criminal charges or conviction and did not do so. The actions by Ms. Santillana do not amount to employee misconduct based on the position held at CMCOA with no direct access to any funds or to CMCOA in having no policy related to potential employee disclosing any criminal history." ⁶

⁶ See Notice of the Unemployment Law Judge, (11/06/2009), p 3-4.

As this decision was based on the telephone hearing held on November 5, 2009, in which the discussion of the interview questions did take place, noting that Ms. Santillana did not falsify answers to questions during the interview, but did answer questions based on the current situation at the time of being on maternity leave and looking for part time employment. Ms. Santillana is asking the court for the unemployment benefits to be in her favor based on the ULJ's first decision after the telephone hearing, noting that Ms. Santillana did not misrepresent or lie about her situation during the interview process. There is not a clear reasoning as to the change to a denial of benefits following the request for reconsideration after the same information was reviewed and the staff at CMCOA did state during the telephone hearing that they recall Ms. Santillana misrepresenting why she had left Good Shepherd, and with that statement the decision was then in Ms. Santillana's favor after the appeal hearing.

It is important to note that Ms. Santillana did not lie or misrepresent her reason for applying at CMCOA and no longer working at Good Shepherd. At the time of interview Ms. Santillana was just finishing her maternity leave and was looking for part time work in a related field where there would be no conflict with possible criminal charges, which were not formally charged or even complete at the time of interview and hire. Those charges and ultimate criminal conviction were for a crime committed before employment and there was no misconduct at any time during employment. It is not accurate in stating that Ms. Santillana's conduct amounted to a felony,⁷ because there was not misconduct of any kind at CMCOA, except the discovery of a recent felony conviction from a previous employer which led to termination from CMCOA due to the charges of the conviction and the reputation of the agency. It was noted on the Notice of Decision of the Unemployment Law Judge dated 11/06/2009, "The Minnesota Court of Appeals has held that an employee that was discharged when the employer discovered a felony conviction for a crime committed before the employment did not commit employment misconduct, and had no duty to voluntarily disclose the conviction."⁸

⁷ See Notice of Decision of the Request for Reconsideration, (01/20/2010), p 4.

⁸ See Notice of the Unemployment Law Judge, (11/06/2009), p 4.

However the second notice from the ULJ following the Request for Reconsideration stated "the Court has also held that a stockbroker under investigation by the Federal Bureau of Investigation had a duty to disclose that investigation to his employer in an interview because it was material to his employment. ⁹

This second statement is not relevant in this case as Ms. Santillana's charges were state and not federal related and were not involving anyone outside of the vulnerable adult the charges were brought up for. Ms. Santillana's employment at CMCOA was not a risk for any further financial misappropriation to occur and the position was not related to direct sources or management of funds. Had CMCOA had a policy on disclosing criminal history, an application or completed a background check by contacting the previous employer, then CMCOA may have found the investigation to be occurring and Ms. Santillana would not have been hired. Since that was not conducted by CMCOA and at the time of interview Ms. Santillana was still being investigated with the result unknown, there was no information shared about the investigation and Ms. Santillana was not legally required to do so with no application to fill out and no questions at any time to answer about criminal charges. Ms. Santillana was terminated from CMCOA based on the criminal charges but that did not amount to any employment misconduct or aggravated misconduct with nothing occurring on the job or off the job during that employment.

In conclusion, as result of this appeal and appellate brief, Ms. Santillana is asking that the Court of Appeals reverse the ULJ's final decision to deny unemployment benefits as this decision was based on a statement that Ms. Santillana falsified information during the interview process, when in fact Ms. Santillana did not misrepresent or lie about looking for part time employment during the ending of her maternity leave. This was also verified by Ms. Vrolson checking the box noted in Exhibit 5, p 1 that stated Ms. Santillana did not lie about background on the application. This concludes that there was no aggravated employee misconduct while employed at CMCOA.

⁹ See Notice of Decision of the Request for Reconsideration, (01/20/2010), p 4.

The actions of Ms. Santillana's felony conviction were not in directly related to the position held at CMCOA and as the situation of financial exploitation occurred prior to employment at CMCOA, it is not an accurate claim to state that Ms. Santillana had employee misconduct resulting in a felony while at CMCOA. Ms. Santillana had excellent employee performance and asks that the court reverse the final decision made by the ULJ to state in favor of her first decision that Ms. Santillana's actions did not amount to employee misconduct and grant the unemployment funds to be granted to Ms. Santillana.

Dated: May 27, 2010

Respectfully Submitted,

A handwritten signature in cursive script that reads "Krista Santillana".

Krista Santillana, Relator