

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LACEY A HOLTMYER
435 EAST GRAY STREET
DES MOINES IA 50315

ULTIMATE NURSING SERVICES OF IA
3305 – 109TH STREET
URBANDALE IA 50322

Appeal Number: 04A-UI-02554-BT
OC: 02/01/04 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Ultimate Nursing Services of Iowa, Inc. (employer) appealed an unemployment insurance decision dated March 1, 2004, reference 02, which held that Lacey Holtmyer (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2004. The claimant participated in the hearing. The employer participated through Jan Miller, Jeanne Duquett and Holly Hasenclever. Employer's Exhibits One through Four were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time field nurse from January 31, 2002 through October 9, 2003. She was discharged for excessive unexcused absenteeism and failing to comply with standard nursing requirements. She was absent for at least 18 full or partial shifts as noted on Employer's Exhibit One. Her final absence was on October 7, 2004 when she was tardy. The claimant received several warnings for paperwork, attendance and clinical issues. A verbal warning was issued on June 30, 2003 and written warnings in 2003 were issued on July 11, 14, 18, 23, 28, 29; August 8, 18, 20; September 8 and 29. The warning on July 11, 2003 was for leaving personal diabetic equipment on a chair in the patient's residence with a toddler at home who could get into it. The warning on July 18, 2003 was for stopping oxygen on a client without a medical order, and the warning on August 20, 2003 was for re-starting oxygen on a patient without a medical order.

As a nurse, the claimant was required to complete documentation regarding the care provided to patients. This information was vital for the patient's health, as well as for legal requirements. Nursing regulations require that everything done when giving client care must be documented, and provide her documentation as required. Sometimes she submitted timesheets for full shifts that had no accompanying paperwork. The employer repeatedly asked the claimant to complete the paperwork and provided deadlines by which it was to be done. While the claimant provided some documents, most were not provided. Some of these documents dated back to January 2003. More than once, the claimant informed the employer she did not have time to prepare the documents or that she lost the documents. She claimed the employer requested her to falsify the documents but the employer merely requested she indicate that the documents were designated as being recreated from notes or her memory. When the claimant's absences did not improve and she refused to complete the required documentation, she was discharged on October 9, 2003. It was only after the claimant was terminated that the employer received all the required paperwork from the claimant.

The claimant filed a claim for unemployment insurance benefits effective February 1, 2004 and has received benefits after the separation from employment in the amount of \$1,485.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant was discharged for excessive unexcused absenteeism and failing to adhere to required nursing standards. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The claimant's final warning was issued on August 18, 2003. The employer has established that the claimant was warned regarding attendance and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive.

More serious than the attendance issue, however, was the claimant's failure to document her patient care. She had also received numerous warnings on this issue and was given several deadlines in which to complete it but she only partially complied. Her actions could have exposed her employer to legal liability, compromised the patient's health and put her own nursing license in jeopardy. The fact that the claimant did turn in all the required paperwork after her discharge establishes she knew the seriousness of the matter, but the fact that she only acted when her own nursing license was on the line demonstrates a complete lack of regard for the employer's interests. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated March 1, 2004, reference 02, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,485.00.

sdb/d