

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SEAN C TERRY

Claimant

**VERA FRENCH COMMUNITY MENTAL
HEALTH CENTER**

Employer

APPEAL NO. 14A-UI-04494-B2

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/30/14

Claimant: Respondent (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 24, 2014, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 30, 2014. Employer participated by Debra Kirby. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibits A-L were admitted into evidence.

ISSUES:

Was claimant discharged for misconduct?

Was the claimant overpaid benefits?

If claimant was overpaid benefits, should claimant repay benefits and/or charge employer due to employer's level of participation in fact finding?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 1, 2014. Employer discharged claimant on April 1, 2014 because employer had reason to believe that claimant had been forging and altering prescriptions for his own benefit.

Claimant was a psychologist with no prescription writing abilities who worked for employer. At or around the time of claimant's hire, claimant received an employee handbook, Code of Conduct, Code of Ethics, and information management policy document, each of which was signed for by claimant. In February of 2014, claimant went to employer after he'd been questioned at WalMart about the legitimacy of a prescription he attempted to have filled. Claimant told employer that he had altered the prescription. His ability to suggest to other doctors the need for prescriptions was removed as was his own ability to get prescriptions from doctors at Vera French. (claimant was also a client at Vera French).

Around March 31, 2014, employer received additional information that claimant was continuing to obtain improper prescriptions. Through investigation it was found that from November of 2013 to March of 2014, claimant was believed to have obtained at least 19 prescriptions through forged prescriptions. Employer immediately moved to terminate the employment of claimant.

Employer did participate in the phone interview on this matter with the fact finder. Through advice of counsel, employer did not forward documents that were being examined by the DEA for possible criminal prosecution. Employer did give the fact finder sufficient information that, standing on its own, would constitute misconduct on the part of claimant such that he would not be eligible for unemployment benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning forgery of prescriptions and employer's Code of Ethics. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant abused his position of trust and appears to have broken the law through his use of altered and forged prescriptions. The administrative law judge is making no decision in regards to any alleged criminal matter surrounding this case, but holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

As the claimant is seen to have been discharged for an act of misconduct, the benefits he has received to date are deemed to have been overpayment of benefits. Claimant must repay benefits before he shall become eligible to receive future benefits. Employer in this matter shall not be charged for benefits paid to claimant as claimant was discharged for misconduct and employer did participate in fact finding.

DECISION:

The decision of the representative dated April 24, 2014, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Claimant shall be deemed to have been overpaid benefits.

Employer's account shall not be charged for benefits paid.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs