

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDI CRAFT**  
Claimant

**APPEAL NO: 11A-UI-05441-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES  
DUNLAP NURSING & REHAB**  
Employer

**OC: 03/13/11**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Dunlap Nursing and Rehab (employer) appealed an unemployment insurance decision dated April 12, 2011, reference 01, which held that Brandi Craft (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 May 18, 2011. The claimant participated in the hearing. The employer participated through Administrator Katie Spellman and David Williams, Employer Representative. Employer's Exhibits One through Five and Claimant's Exhibit A were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**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 certified nursing assistant from November 17, 2009 through March 13, 2011 when she was discharged after violating a final warning. She was placed on the final warning on February 23, 2011 which stated that any further violations would result in her termination. The claimant was an hour late for work on March 11, 2011 when she arrived at work at 11:30 p.m. She went to help a friend with a flat tire because she said the friend was not from this area and did not have anyone else to help her. The claimant testified that she did not believe she would lose her job because she had someone else cover for her. She claimed that she called the charge nurse at 8:43 p.m. on March 11, 2011 but the charge nurse signed a written statement which indicated the claimant called and spoke with the employer at approximately 10:40 p.m. that night.

The employer issued the claimant a verbal warning on January 26, 2010 for failure to make up an in-service video. A written warning was issued on June 23, 2010 for refusing a directive by

her supervisor. The claimant was directed to give snacks to three residents but the residents were put to bed without snacks. Additionally, the claimant was unprofessional around the residents and the family members by teasing them and being rude. A final warning and a three-day suspension was issued on July 21, 2010 after the claimant posted nine status updates on Facebook while working. Additionally, the claimant posted pictures of the work facility on Facebook.

The second final warning issued in February 2011 was due to the claimant not reporting to work on time, not starting work right away and not returning from breaks on time. The claimant also refused to share workloads and to help her co-workers. She also called others by inappropriate names and had difficulty controlling her attitude when communicating with her co-workers.

The claimant filed a claim for unemployment insurance benefits effective March 13, 2011 and has received benefits after the separation from employment.

### **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 § 96.5-2-a.

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.

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.

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 claimant was discharged on March 13, 2011 after she was an hour late for work on March 11, 2011. She was placed on a final warning on February 23, 2011 and knew that any further violations would result in her termination. However, on March 11, 2011 she chose to go help a friend with a flat tire instead of reporting to work on time. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

#### **DECISION:**

The unemployment insurance decision dated April 12, 2011, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs