

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY M SMITH
Claimant

APPEAL NO. 10A-UI-04795-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

**Original Claim: 02/21/10
Claimant: Respondent (2-R)**

Section 96.5-2-a – Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 18, 2010, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 13, 2010. The claimant participated and was represented by Stephanie Fueger, attorney at law. The employer participated by Mike Terrill, administrator, and Julie Headley, MDS Coordinator, and was represented by Ken Wentz, attorney at law. The record consists of the testimony of Mike Terrill; the testimony of Julie Headley; the testimony of Wendy Smith; and Employer's Exhibits 1 through 4.

ISSUES:

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a skilled nursing facility located in Dubuque, Iowa. The claimant served as director of nursing until her termination on February 25, 2010. She had been hired on October 12, 2009. The reason for her termination was providing misleading documentation to the employer on February 19, 2010, and failing to comply with the employer's policy concerning what are known as Falls Committee Meetings.

As director of nursing, the claimant was required to hold a weekly meeting on falls that were sustained by residents during the previous week. The employer maintained a separate book on resident falls and the meeting was held to coordinate information and any necessary intervention, such as providing additional physical therapy. The Falls Committee Meeting was held after the Medicare meeting. When the Medicare meeting was over, Julie Headley, MDS

coordinator, would make an announcement over the loud speaker that the Medicare meeting was over and the Falls Committee Meeting would now begin. Ms. Headley attended both meetings.

On February 19, 2010, the claimant was asked if Falls Committee Meetings were held on January 13, 2010; January 20, 2010; and January 27, 2010. The claimant said yes. This answer was not correct, as no meetings had been held on those days. A meeting was held instead on January 29, 2010. The employer, while reviewing the sign-up sheets and attached documentation, had been concerned about whether the meetings had occurred. This concern led to the meeting with the claimant on February 19, 2010, when the claimant was specifically asked about the meetings on January 13, 2010; January 20, 2010; and January 27, 2010. After further investigation, the claimant was suspended on February 24, 2010, and then terminated on February 25, 2010. The employer considered the claimant to have committed a Critical Type A violation. The employee handbook stated that omission or falsification of any company record would lead to termination. The claimant was aware of this policy.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by an employee to an

employer is the duty of honesty. An employer can reasonably expect that an employee will accurately prepare company records and respond truthfully to questions about the employer's business. The employer has the burden of proof to show misconduct.

After carefully considering all of the evidence in this case, the administrative law judge concludes that the employer has established misconduct on the part of the claimant. The claimant was responsible for holding what the employer called Falls Committee Meetings every week. The purpose of these meetings was to consider all of the falls that residents had had during the previous week and determine if any further intervention needed to be made on behalf of the resident and to share pertinent information. Although the claimant testified that she was never told that she was to hold these meetings, this testimony is not credible. Julie Headley, who also attended Falls Committee Meetings, and who had worked at the facility for a long time, testified credibly that the director of nursing held these meetings and did not simply attend the meetings if she was available. The claimant herself had called these meetings and had been in charge of the meetings. She had the falls book and the sign-in sheets. She cannot credibly state that she did not know she was supposed to be in charge of these weekly meetings.

Not only did the claimant not hold the meetings weekly, she gave misleading information to her employer on if and when the meetings were held. The employer's policy stated that falsification of a company document was grounds for termination. The claimant's breach of her fundamental duty of honesty when responding to an appropriate question from the employer about her job shows a deliberate disregard of her employer's interests. Misconduct has been shown. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits,

as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

This matter is remanded to the claims section for determination of the overpayment issue.

DECISION:

The representative's decision dated March 18, 2010, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. This matter is remanded to the claims section for determination of the overpayment issue.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw