

**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**

**AMY R ROBINSON
1109 MAPLE ST
ATLANTIC IA 50022-2336**

**SALEM LUTHERAN HOMES
PO BOX 358A
ELK HORN IA 51531-0358**

**Appeal Number: 06A-UI-04649-RT
OC: 04/02/06 R: 01
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 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Salem Lutheran Homes, filed a timely appeal from an unemployment insurance decision dated April 21, 2006, reference 01, allowing unemployment insurance benefits to the claimant, Amy R. Robinson. After due notice was issued, a telephone hearing was held on May 16, 2006, with the claimant participating. Deb Anthofer, Officer Manager, and Alan Campbell, Administrator, participated in the hearing for the employer. Employer's Exhibits One through Three were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One through Three, the administrative law judge finds: The claimant was employed by the employer as a full-time social worker from May 4, 2005, until she was discharged on March 27, 2006. The claimant was discharged for record tampering and other inappropriate recordkeeping. The employer maintains a nursing home for the elderly. On or about March 27, 2006, the claimant changed a name and address of the contact person for Resident A, an elderly resident in the employer's nursing home. The claimant changed the name and address of the contact person without appropriate legal documentation, such as a power of attorney. The claimant did so at the request of a family member. The claimant did so when the initial contact person was not present. The claimant was aware that she needed legal documentation and conceded that she made a mistake. The family member told the claimant that she had some paperwork drawn up but did not say what it was. The claimant asked the family member to bring it in but the family member did not do so. The director of nursing noticed this change and brought it to the attention of the employer and the claimant was then discharged on March 27, 2006. The claimant had received training concerning such matters, including recordkeeping. Further the employer has policies as shown at Employer's Exhibit Three, contained in its handbook, a copy of which the claimant received and for which she signed an acknowledgement, providing that falsifying and/or tampering with records is a group three offense allowing termination on the first offense.

On December 8, 2005, as shown at Employer's Exhibit Two, the claimant received a verbal warning in a written corrective action notice because she altered the care plans of Resident B without authority. The state of Iowa, during its inspection, noticed the change in the care plans. At the time of the verbal warning the claimant was informed of the seriousness of her violation but because she was a new employee she was not at that time discharged. Pursuant to her claim for unemployment insurance benefits filed effective April 2, 2006, the claimant has received unemployment insurance benefits in the amount of \$1,876.00 as follows: \$215.00 for the benefit week ending April 8, 2006 (vacation pay \$122.00); \$337.00 for two weeks, for the benefit weeks ending April 15 and 22, 2006; \$313.00 for the benefit week ending April 29, 2006 (earnings \$108.00); and \$337.00 for two weeks, for the benefit weeks ending May 6 and 13, 2006.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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 parties agree, and the administrative law judge concludes, that the claimant was discharged on March 27, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. There is really little disagreement between the parties about the facts. After receiving a written corrective action notice classified as a verbal warning dated December 8, 2005, for altering the care plans of Resident B and being told of the seriousness of that at the time and that such a violation could result in her discharge, just a little more than three months later the claimant changed the name and address of a contact person for Resident A without legal documentation or appropriate authority. The claimant conceded that she changed the name of the contact person and further conceded that she knew she needed legal documentation and did not have it and conceded further that it was a mistake. The claimant did so at the request of a family member but this does not excuse the claimant's behaviors. The administrative law judge is constrained to conclude that there is not a preponderance of the evidence that the claimant's acts were deliberate acts constituting a material breach of her duties and obligations arising out of her worker's contract of employment or that they evince a willful or wanton disregard of the employer's interests and, therefore, are not disqualifying misconduct for those reasons. However, the administrative law judge is constrained to conclude that the claimant's acts in changing records of both the care plans for which she received a warning and then the contact person for which she received a discharge were carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. The claimant was employed as a social worker in a nursing home for the elderly

and should have been particularly careful about changing any records, especially after the warning. Nevertheless, the claimant changed the records and was discharged. Accordingly, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant, until, or unless, she requalifies for such benefits.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,876.00 since separating from the employer herein on or about March 27, 2006 and filing for such benefits effective April 2, 2006. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of April 21, 2006, reference 01, is reversed. The claimant, Amy R. Robinson, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she was discharged for disqualifying misconduct. The claimant has been overpaid unemployment insurance benefits in the amount of \$1,876.00.

cs/pjs