

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY GOODSON
Claimant

APPEAL NO: 10A-UI-00910-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXCEPTIONAL PERSONS INC
Employer

OC: 11-29-09
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 11, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 24, 2010. The claimant called prior to the hearing and chose not to participate in the hearing. Angie Tye, Human Resources Director and Rachel Zeien, Program Manager and former Support Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time administrative assistant for Exceptional Persons from July 30, 2007 to December 2, 2009. On December 30, 2008, the employer learned that all October medication sheets the claimant prepared had a medication stop date of September 30, 2008 (Employer's Exhibit Three). On April 17, 2009, the claimant received a written warning for failure to perform her job duties and unsatisfactory work. She was responsible for updating and printing the monthly medication records for the employer's clients who live in several group homes. The medication reports are very important because the workers at the group homes depend on those records to know what medications each client is to receive, when, and how much (Employer's Exhibit Five). The claimant made errors on the reports in February and March 2009 after having been told at her mid-year review and during coaching sessions about the importance of the accuracy of the reports (Employer's Exhibit Five). On September 29, 2009, the claimant received a written warning for several items, including a listing of employee expectation for improvements on following the medication tracking record checklist for each site before printing and distributing the medication tracking record sheets (Employer's Exhibit Three). She also received a performance improvement plan the same day stating she needed to "reduce the number of errors on the monthly medication tracking record that are distributed to

ten sites; will follow the medication tracking record checklist for each site before printing and distributing the medication tracking record sheets” (Employer Exhibit Four). The employer indicated success would be measured by the claimant completing “the monthly medication tracking record checklist for each person served at each of the 10 licensed sites and Ms. Zeien (Support Manager) will review the monthly medication tracking record sheet with the checklist prior to the sheet being distributed to each Site Coordinator and Medication tracking records will be given to the Site Coordinator/Program Manager no later than the 26th of each month...Any necessary corrections will be completed within the same business day as identified by the site supervisory team and sheets returned to the Site Coordinator/Program Manager (Employer’s Exhibit Four). On December 1, 2009, the claimant received another written warning about medication record errors (Employer’s Exhibit One). It identified only the 20 “most severe and safety sensitive errors by worksite the claimant made in the electronic medication records” (Employer’s Exhibit One). The claimant had made 131 total errors effective November 1, 2009, and failed to correct 43 and 97 total errors effective December 1, 2009, and failed to correct 17 (Employer’s Exhibit One). The claimant had been coached and asked to explain the medication error change process and was able to do it, demonstrating to the employer she knew how to do so but disregarded the process, which could be fatal in certain cases. After the warning December 1, 2009, the employer decided it needed to terminate the claimant’s employment, partially because of liability concerns and she was discharged December 2, 2009.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was coached and counseled about her medication errors and the importance of correcting errors but she continued to make errors and failed to correct them placing the employer's clients in jeopardy. Hers was a very exacting position requiring attention to detail. While she demonstrated she understood the process and the employer's expectations she did not follow those procedures on a consistent basis, as shown by her 131 errors effective November 1, 2009, 43 of which were not corrected, and the 97 errors effective December 1, 2009, 17 of which were not corrected. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The January 11, 2010, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs