

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**APRIL PRATT**  
Claimant

**APPEAL NO: 14A-UI-05651-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR VALLEY HOSPICE INC**  
Employer

**OC: 05/04/14**  
**Claimant: Respondent (2)**

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 May 28, 2014, 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 June 25, 2014. The claimant participated in the hearing. Katie Unland, Director of Human Resources; Cindy Hambly, DON and Alan Brunsmas, Administrator, both from Windsor Nursing and Rehabilitation Center, participated in the hearing on behalf of the employer. The employer was represented by Attorney Sam Anderson. Employer's Exhibits One through Six 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 hospice CNA for Cedar Valley Hospice from August 20, 2003 to April 25, 2014. She was discharged after two patients asked that she not return as their aide in March 2014 and she was asked to leave a nursing facility that the employer works with extensively and not return April 24, 2014.

One of the claimant's assignments involved working with a patient at Windsor Nursing and Rehabilitation Center. On April 24, 2014, the claimant was feeding her patient when Cindy Hambly, DON, asked the claimant to take the patient to his room for a nap after he finished eating instead of taking him to the television area and watching television while the patient read the paper without any interaction between the two. A state surveyor had been at the facility a few days earlier and indicated her concern about the lack of contact between them. After Ms. Hambly asked to lay the patient down in his room the claimant said she had been at the facility long enough to know no one would have helped her put him in bed. Ms. Hambly asked the claimant if she requested help and the claimant stated she had not because she "knew they would not help her" (Employer's Exhibit Two). Ms. Hambly told the claimant that she could ask her anytime or ask any of the other employees for help and the claimant said, "I knew that

wasn't going to happen" (Employer's Exhibit Two). Ms. Hambly reported the claimant was "very rude" and "inappropriate with her response to the request being made" (Employer's Exhibit Two). Ms. Hambly told the claimant she was going to be notifying Cedar Valley Hospice to discuss this issue with her supervisor and then left the area (Employer's Exhibit Two). Ms. Hambly went to Administrator Alan Brunσμα and informed him of the incident and he went back to the dining room to speak to the claimant and found her texting underneath the table, which is a violation of the employer's policy prohibiting texting on the premises (Employer's Exhibit Two). He told her there is no texting allowed in the building and the claimant "got very rude again and stated that she was emailing her boss about them calling on her and this was "so ridiculous" (Employer's Exhibit Two). Mr. Brunσμα asked her to leave and not return to the facility and Mr. Brunσμα and Ms. Hambly escorted the claimant out of the building. The claimant was angry and started yelling that she "takes better care of these residents than anyone in this building and that they better watch their own staff because being on their phones is all they do" (Employer's Exhibit Two). The two Windsor Nursing and Rehabilitation Center employees were "shocked at how rude and unprofessional (the claimant) was" (Employer's Exhibit Two). Mr. Brunσμα told the employer the claimant continued "spouting off" about the staff at Windsor being bad (Employer's Exhibit Two). Mr. Brunσμα asked her several times to refrain from yelling in the halls and to stop saying what she was saying and to leave and the claimant eventually reached the front door with her escorts and left the building.

Ms. Hambly informed Katie Unland, Director of Human Resources for Cedar Valley Hospice, that Windsor Nursing and Rehabilitation Center never wants the claimant in the building again and also indicated she is filing a report at the divisional level with their company and that the claimant would likely not be allowed into any of their four facilities in the area, which would mean the employer could not send the claimant to many places if all of the Windsor facilities were off limits to her.

The employer asked the claimant to provide a written statement of what happened April 24, 2014, at Windsor and the claimant's statement was remarkably similar to the information given by the Windsor staff. When Ms. Unland spoke to the claimant about this situation the claimant agreed her actions were not professional or appropriate.

The employer reviewed its policies and the claimant's personnel file and observed that two hospice patients had also requested the claimant have no further contact with them in March 2014, and consequently the employer made the decision to terminate the claimant's employment effective April 25, 2014.

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 § 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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Due to the nature of the employer's business it is essential that it maintain very positive relationships with the nursing facilities it works with to care for hospice patients. The claimant's actions resulted in her being prohibited from entering any of Windsor's four local facilities the employer works with on a daily basis and any appearance that the employer condoned the claimant's rude, unprofessional and inappropriate conduct could have threatened the extremely important relationships the employer has with the area facilities.

The claimant had at least three opportunities April 24, 2014, to behave in an appropriate manner or apologize for her previous actions but instead chose to be rude, unprofessional and inappropriate on each occasion. Her actions greatly limited the facilities the employer could assign her to and have her work with hospice patients who need stability and serenity, and while the claimant soon recognized that her behavior was not acceptable, she knew or should have known that the employer could not accept that type of conduct. It is unfortunate that this situation happened with a long-term employee. But it is also precisely because the claimant was a long-term employee that she should have known the employer's expectations of her and that her actions would result in termination.

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.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)“b” as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer’s account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

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 claimant has received benefits but was not eligible for those benefits. There is no evidence the claimant received benefits due to any fraud or willful misrepresentation. Because the employer participated in the fact-finding interview, however, the overpayment of benefits cannot be waived. The claimant is overpaid benefits in the amount of \$2,608.00.

**DECISION:**

The May 28, 2014, 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 employer participated in the fact-finding interview. Therefore, the overpayment cannot be waived. The claimant is overpaid benefits in the amount of \$2,608.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs