

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FELICIA O REEVES**  
Claimant

**APPEAL NO: 14A-UI-06387-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAINSTREAM LIVING INC**  
Employer

**OC: 06/01/14**  
**Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.3(7) – Overpayment of Benefits

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's June 17, 2014 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the July 15 hearing. Marcanne Lynch, the Human Resource Manager; Cory Johnson, the Program Coordinator; and Carol Waddel, a Support Living Technician; appeared on the employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUES:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

Has the claimant been overpaid any benefits?

Is the claimant required to pay back any overpayment?

**FINDINGS OF FACT:**

The claimant started working for the employer in January 2012. She worked full time as a support living technician for consumers in a group home who have various levels of intellectual disabilities. The claimant received training and passed the training to perform medication passes and applications in accordance with the employer's policy and procedures in May 2012, (Employer's Exhibit One).

One consumer, the claimant assisted, was a quadriplegic. His physician ordered that his bowel movements be monitored and if the consumer did not have a bowel movement in three days, the consumer was to receive a suppository.

On April 24, 2014 Waddel was finishing her shift and wanted to leave to pick up a grandchild. The claimant relieved Waddel. Waddel had been with this consumer during the day and noted he had not had a bowel movement for three days. Waddel had prepped him to have a suppository and asked the claimant if she would give him one. Waddel understood the claimant agreed to do this.

The claimant does not like giving suppositories. The consumer did not receive a suppository on April 24.

When Waddel returned to work on April 28 she noticed the claimant noted this consumer had no bowel movement and neither the claimant nor anyone else had given the consumer a suppository. Waddel then reviewed the medical administration records for April. She noticed that while the claimant noted the consumer had no bowel movements, she had not given the consumer a suppository as his doctor ordered. The claimant was noted on the medical administration record that she provided the medical oversight for this consumer on April 3, 8, 17 and 24. The claimant did not give the consumer a suppository even though she told Waddel she would on April 24 and the earlier dates in April the consumer needed a suppository in accordance with the physician's order, but the consumer did not receive the ordered suppository.

After the employer investigated and verified Waddel's observation was accurate, the employer talked to the claimant on May 7. When the claimant talked to Johnson, she acknowledged Waddel asked her to give the consumer a suppository and it was an oversight on her part that she had not. The employer asked how it was oversight when she had not given the consumer suppositories on April 3, 8 and 17 also. Even though the claimant was not the only person who could have given the consumer the suppository, she told Waddell she would give the suppository on April 24 and she was the employee listed as providing the medical oversight for this consumer on the specified days.

Giving a consumer a suppository was part of the claimant's job duties. If the claimant did not feel she had adequate training to perform this job, she could have asked for more training but did not. During her annual performance review in October 2014, the employer talked to the claimant about failing to perform some of her specific tasks. Even though giving a suppository was not discussed, the employer talked to the claimant about the importance of performing all of her assigned tasks.

On May 7 the employer discharged the claimant for failing to follow a physician's order when she did not give a consumer a suppository four different days in April which could have adversely affected the consumer's health. The physician's ordered a suppository so the consumer would not develop a bowel obstruction.

The claimant established a claim for benefits during the week of June 1, 2014. The employer participated at the fact-finding interview. The claimant filed claims for the weeks ending June 7 and 14. She received her maximum weekly benefit amount of \$335.00 for each of these weeks.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant repeatedly indicated during the hearing that she did not feel comfortable giving suppositories. While I do not doubt this is true, it was part of her job to give suppositories to this consumer as the physician ordered. If the claimant would not give the suppository, she had a duty to make sure a coworker gave the suppository as the physician ordered. The claimant did not do this. The claimant's failure to follow the physician's orders jeopardized this consumer's well-being. Her assertion that it was oversight that she did not give the consumer a suppository four different days is not credible. Her actions amount to an intentional disregard of her duties and obligations to the employer. The claimant committed work-connected misconduct. As of June 1, 2014 the claimant is not qualified to receive benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3(7). Since the claimant is not qualified to receive benefits as of June 1, she has been overpaid \$670.00 in benefits she received for the weeks ending June 7 and 14, 2014.

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. 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. Iowa Code § 96.3(7)b. The facts establish the employer participated at the fact-finding interview. Therefore, the claimant is responsible for paying back the \$670.00 overpayment.

**DECISION:**

The representative's June 17, 2014 (reference 01) determination is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 1, 2014. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible.

The claimant has been overpaid \$670.00 in benefits she received for the weeks ending June 7 and 14, 2014. The claimant is responsible for paying back the overpayment of benefits she received.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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