

**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**

**DAWN M FRANK
117 S JEFFERSON AVE
MASON CITY IA 50401**

**U S A HEALTHCARE-MASON CITY LLC
C/o THOMAS & THORNGREN INC
PO BOX 280100
NASHVILLE TN 37228**

**Appeal Number: 04A-UI-00039-DWT
OC 11/30/03 R 02
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 are 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

U.S.A. Healthcare-Mason City LLC (employer) appealed a representative's December 22, 2003 decision (reference 01) that concluded Dawn M. Frank (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 26, 2004. The claimant participated in the hearing. Tracy Arnold, the administrative assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on April 1, 2002. The claimant worked as a full-time certified nursing assistant. Her supervisor was Liz Davidson, the director of nursing.

During her employment, the claimant received several warnings for reporting to work late, not reporting to work in uniform and for being rude or discourteous to residents or co-workers. On September 22, the claimant received a written warning for failing to report to work in her uniform. On September 24, 2003, the claimant received a written warning for being discourteous to a resident. On October 4, the claimant received a verbal warning for reporting to work late on May 27, September 6 and 27, 2003. The claimant reported to work late on November 6.

On November 29, the claimant was 45 minutes for work. Davidson did not work on Saturday so no one said anything to the claimant. The claimant's alarm clock did not go off or she did not hear it on November 29. Before she went to bed on November 30, 2003, the claimant checked her alarm clock. The alarm clock appeared to work satisfactorily when she went to bed on November 29.

On November 30, the claimant did not hear the alarm go off or it did not go off. The claimant did not wake up until 7:30 a.m. The claimant immediately contacted the employer to let them know she was coming to work. The claimant woke up her two children, put on her uniform top but wore jeans because the uniform pants were wet because they were still in her washer. After the claimant took her children to the sitter, she got to work by 8:00 a.m. The employer's shower girl did not report to work on November 30 so residents had not received their showers by the time the claimant reported to work. When a resident asked the claimant to help her get a shower, the claimant indicated she would after the resident finished her breakfast. The claimant helped the resident get the shower after she finished her breakfast.

Co-workers reported to Davidson that the claimant had been rude to the resident on November 30 because the claimant refused to give her a shower. Davidson also learned the claimant not only reported to work late on Saturday and Sunday, but she also did not report to work in her uniform. The employer discharged the claimant on December 2, 2003. The employer discharged the claimant because she was again late for work, did not report to work in her uniform, had bruises on her neck she did not cover up and was rude to a resident on November 30, 2003.

The claimant established a claim for unemployment insurance benefits during the week of November 30, 2003. She filed claims for the weeks ending December 6, 2003 through January 24, 2004. She received her maximum weekly benefit amount of \$227.00 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The facts do not establish that the claimant was rude or discourteous to a resident on November 30, 2003. The claimant admitted she was late for work on November 29 and 30 and did not wear her uniform pants on November 30. The employer had already verbally warned the claimant she could not be late for work. The claimant understood the importance of getting to work on time. Although the claimant may have checked her alarm clock before she went to bed on November 29, she did nothing else even though she had problems with the same alarm clock that morning. The claimant failed to take reasonable steps to make sure she had a reliable method to get up and get ready for work so she would get to work for her 6:00 a.m. shift on November 30. The claimant made the decision to again rely on an alarm clock that had already caused her to be 45 minutes late for work. The claimant decided to take a chance and lost because on Sunday, November 30 she was two hours late for work. This amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. As of November 30, 2003, the claimant is not qualified to receive unemployment insurance 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. The claimant has been overpaid a total of \$1,816.00 in unemployment insurance benefits because she is not legally entitled to receive benefits for the weeks ending December 6, 2003 through January 24, 2004.

DECISION:

The representative's December 22, 2003 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 30, 2003. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged for any benefits paid to the claimant. The claimant is not legally entitled to receive benefits for the weeks ending December 6, 2003 through January 24, 2004. She has been overpaid \$1,816.00 in benefits she received for these weeks.

dlw/kjf