

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALYCE M SINDT
Claimant

APPEAL NO. 09A-UI-16993-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 10/18/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Care Initiatives filed an appeal from a representative's decision dated November 3, 2009, reference 01, which held that no disqualification would be imposed regarding Alyce Sindt's separation from employment. After due notice was issued, a hearing was held by telephone on December 17, 2009. Ms. Sindt participated personally. The employer participated by Dorie Brennecke, Administrator; Jeanette Behncke, Director of Nursing; and by Sammy Roth and Melissa Hoffman, LPN Charge Nurses. Exhibits One through 16, inclusive, were admitted on the employer's behalf. The employer was represented by Lynn Corbeil of Talx Corporation.

ISSUE:

At issue in this matter is whether Ms. Sindt was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Sindt was employed by Care Initiatives from August 30, 1996 until October 16, 2009. She was last employed full time as a certified medication aide (CMA). She was discharged for falsifying documents.

The employer is required to maintain a flow sheet to document the dispensing of narcotics. After medications are passed, the CMA is to get together with a nurse to count the narcotics to make they are all accounted for. The nurse initials the form to verify that the count has been conducted. The employer reviewed the narcotics flow sheets after a nurse determined that the initials on the form were not hers. It was determined that there were five occasions on which the initials of Sammy Roth and Melissa Hoffman were on the flow sheets but were not actually written by them. Ms. Sindt was the CMA involved in dispensing the narcotics on all five occasions. As a result of having falsified the nurses' initials, Ms. Sindt was suspended on October 13 and discharged on October 16, 2009. In making the decision to discharge, the employer also considered the fact that Ms. Sindt had committed medication errors in the past.

Ms. Sindt filed a claim for job insurance benefits effective October 18, 2009. She has received a total of \$2,352.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Sindt was discharged for falsifying narcotics records. She placed the initials of nurses on forms that they had not, in fact, reviewed or authorized her to initial. She denied responsibility for placing the initials on the flow sheets. The administrative law judge is not inclined to believe some other employee would take the time to sign the nurses' initials. It seems unlikely that someone other than a CMA would know the significance of having the nurses' initials on the forms.

Inasmuch as the falsified initials appeared for medications that were all administered by Ms. Sindt, it is reasonable to conclude that she was, in fact, the individual who placed the initials on the forms. The falsification of narcotics records was clearly contrary to the type of behavior the employer had the right to expect. Without the assurance that its records are being maintained properly, the employer cannot be assured that the narcotics count is accurate. Falsified documentation could potentially affect the employer's license to do business. For the reasons cited herein, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

Ms. Sindt has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated November 3, 2009, reference 01, is hereby reversed. Ms. Sindt was discharged for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Sindt will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs