

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA V MANNING
Claimant

APPEAL NO: 08A-UI-03557-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARMONY HOUSE CARE CENTER
Employer

OC: 03/02/08 R: 03
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Harmony House Care Center (employer) appealed a representative's April 3, 2008 decision (reference 01) that concluded Melissa V. Manning (claimant) was qualified to receive 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 May 2, 2008. The claimant participated in the hearing with her attorney, Bob Rush. Ray Aranza, attorney at law, represented the employer. Bonny Henry and Barb Hanson testified on the employer's behalf. Cara Mayner observed the hearing. During the hearing, Employer Exhibits One through Eight were offered and admitted as evidence. 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 worked more than 17 years for the employer. She worked as a full-time licensed practical nurse. During the course of her employment, the claimant received some written warnings.

On September 26, 2007, the employer gave the claimant her second written warning for failing to report to work on time. (Employer Exhibit One.) In addition to receiving the warning, the claimant also received a three-day suspension for repeatedly failing to report to work on time. On January 8, 2008, the employer gave the claimant a written warning and a four-day

suspension for still reporting to work late. The employer warned the claimant her job was in jeopardy if she did not report to work on time again. The employer also noted that the claimant made too many charting errors in her medication administration. (Employer Exhibit Two.) On February 2, 2008, the employer gave the claimant another written warning and indicated she needed to take corrective action immediately. The employer noted problems in verifying medications and treatments, failure to timely fax orders to the pharmacy and properly recording and making assessments. The employer warned the claimant that her job was in jeopardy if she did not show immediate improvement. (Employer Exhibit Six.)

Sometime after February 2, employees reported that some residents were not receiving prescribed treatments from the claimant. The employer investigated and placed tape on treatment kits and lotions. If the tape was broken, the employer knew the treatment had been provided to a resident. On February 28, 2008, the employer noted three treatments where the tape was not broken that should have been during the claimant's February 27, 2008 shift. When the employer talked to the claimant about these treatments, the claimant admitted she had not done one because she concluded the resident did not need the treatment. For another resident the claimant used another resident's cream to provide a treatment to a resident. The third incident involved a resident where the claimant provided a treatment at the nurse's station. An employee verified the claimant had completed the treatment at the nurse's station. (Employer Exhibit Eight.) The employer's nursing policy and procedure for the treatment the claimant provided to the resident stated privacy must be provided to the resident. (Employer Exhibit Seven.)

The claimant admitted she performed the resident's treatment at the nurse's station so she had proof she actually did the treatment. The claimant was upset that the employer placed seals on some treatments to make sure the claimant gave the treatment to a resident. Even though the claimant kept making mistakes, the primary reason for discharging the claimant was because on February 27, 2008, she gave a resident a treatment at the nurse's station that should have been done in private setting.

The claimant established a claim for benefits during the week of March 2, 2008. She filed claims for the weeks ending March 8 through May 3, 2008. She received her maximum weekly benefit amount of \$347.00 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 section 96.5-2-a. 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). The facts establish the employer discharged the claimant because she intentionally gave a resident a treatment in a public area, the nurse's station, instead of in a private location. The claimant completed the treatment at the nurse's station because she was upset the employer questioned her job performance and whether she gave residents their prescribed treatments. Instead of the performing the resident's treatment in the privacy of his room or a restroom, the claimant gave

the resident the treatment at the nurse's station for the sole purpose of verifying she gave the resident the treatment.

The claimant knew or should have known her job was in jeopardy after she received the February 2, 2008 written warning. The claimant intentionally disregarded the standard of behavior the employer had a right to expect from her when she decided to perform a resident's treatment in a public area, the nurse's station, for the sole purpose of having another employee witness the treatment. This intentional violation of the employer's policy when the claimant's job was in jeopardy, constitutes work-connected misconduct. As of March 2, 2008, 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 section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending March 8 through May 3, 2008. The claimant has been overpaid \$3,123.00 in benefits she received for these weeks.

DECISION:

The representative's April 3, 2008 decision (reference 01) is reversed. The claimant committed work-connected misconduct when she decided to perform a resident's treatment at the nurse's station so she would have a witness verifying she performed the treatment. The claimant is disqualified from receiving unemployment insurance benefits as of March 2, 2008. 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. The claimant has been overpaid and must repay a total of \$3,123.00 in benefits she received for the weeks ending March 8 through May 3, 2008.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs