

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROCHELLE STANFORD
Claimant

APPEAL NO: 08A-UI-10338-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EMPLOYMENT SERVICES
Employer

**OC: 11-18-07 R: 03
Claimant: Respondent (2-R)**

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 October 23, 2008, 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 November 19, 2008. The claimant participated in the hearing. Wendy Ager, Administrator and Sue Weber, Director of Nursing, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four 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 full-time RN for Heartland Employment Services from February 1, 2008 to June 13, 2008. The oncoming and off-going nurses are required to do a narcotic count together at the beginning/end of each shift and if the count is off they must reconcile it at that moment because they may have given the medication and not documented it or it may have fallen out of a container or been taken by a staff member. If they cannot determine what happened to the missing medication they are required to call the director of nursing so an investigation can be completed. If the investigation cannot determine why the narcotic count is off the situation must be reported to DIA and the nursing board as abuse because the patient may not have received the medication and may have been in pain. On March 13, 2008, the claimant received a written warning and one-day suspension because the narcotic count was off on her hall March 8, 2008 (Employer's Exhibit One). The claimant documented that a patient denied the need for pain medication on that date but the claimant also wrote that the medication was given at 2:15 p.m. and 9:00 p.m. in the narcotic chart. Because of the discrepancy in charting the employer was not sure if it was a documentation error or if the patient actually received the medication so it assumed it was inaccurate charting and warned and suspended the claimant. The claimant told the employer she did not believe she received an adequate amount of training on charting so the employer provided one-on-one training with a nurse

manager (Employer's Exhibit One). On June 9, 2008, the employer discovered the narcotic count of June 5, 2008, was off during the 10:00 p.m. count when the claimant signed that it was an accurate count (Employer's Exhibit Two). The employer suspended the claimant pending further investigation (Employer's Exhibit Two) and found that the claimant left the building after her shift June 5, 2008, without doing a narcotic count and when the LPN called her at home to tell her the count was off and had not been done the claimant instructed her to sign the claimant's name to the document which is a violation of the Nurse Practice Act, state law and the employer's policy (Employer's Exhibit Three). The claimant argued that the day nurse failed to do the count but both of them were required to do the count together at the end of the claimant's shift when they would have presumably discovered the vicodin count was off. When the claimant reported for work June 6, 2008, a patient asked for pain medication and the claimant took the keys for the narcotics and medication cart from the first shift nurse who was busy and had not yet counted the narcotics. The claimant was terminated June 13, 2008, for incorrect documentation, leaving the building and asking another nurse to sign her name on the documentation, all of which were violations (Employer's Exhibit Three).

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 section 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.

871 IAC 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was suspended and warned about her medication documentation March 14, 2008, and was warned and suspended again June 9, 2008, pending investigation of why the narcotic count was off. The claimant left the building June 5, 2008, without completing the narcotic count and when it was discovered to be incorrect the LPN called the claimant at home and the claimant instructed her to sign her name to the documentation. The claimant knew or should have known that she was in violation by failing to do the count at the end of her shift and asking the other nurse to sign her documentation and after the previous warning that her actions could result in termination. The claimant received one-on-one training after complaining she was not adequately trained in documentation but still failed to follow the employer's policy regarding the medication count. 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). Benefits are denied.

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 employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The October 23, 2008, 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 matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs