

**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**

**STACY L HARRIS
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FORT MADISON IA 52627**

**SUNNYBROOK HOME CARE INC
302 – 4TH ST
PO BOX 38
WEST POINT IA 52656**

**SUNNYBROOK HOME CARE INC
ATTN HARLEY CARTER
116 N COURT ST
FAIRFIELD IA 52556**

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STE 1200
317 – 6TH AVE
DES MOINES IA 50309**

Section 96.5(2)a – Discharge
Section 95.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Sunnybrook, filed an appeal from a decision dated November 9, 2005, reference 01. The decision allowed benefits to the claimant, Stacy Harris. After due notice was issued, a hearing was held by telephone conference call on December 22, 2005. The claimant participated on her own behalf. The employer participated by Owner Harley Carter, Office Coordinator Denea Gonterman, Administrator Ronda Watson, Scheduler Donna Jarvis, Office Coordinator Pam Alawneh, and Certified Nursing Assistant Shawna Rainbolt. The employer was represented by Attorney Thomas Reavley.

**Appeal Number: 05A-UI-11826-HT
OC: 10/16/05 R: 04
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 is 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)

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Stacy Harris was employed by Sunnybrook from March 20, 2002 until October 19, 2005. She was a full-time home care aide. The duties of a home care aide vary somewhat from client to client depending on the specific care plan for each person. However, aides do not do any personal errands for the client outside the home unless it is an emergency and has first of all been cleared by the employer. Aides are to perform personal care and some light housework but nothing else.

All staff are to carefully and accurately document all of the time spent with each client. This is critical because the employer receives government funding, and inaccuracies or falsification can lead to criminal and financial penalties. Administrator Pam Watson held a meeting with all of the staff on July 21, 2005, after she had received some reports indicating there had been deliberate falsification of time records. She informed the entire staff that any misrepresentation or falsification of time records was a dischargeable offense.

Ms. Harris received a written warning on August 24, 2005, because she had altered her time sheet regarding the amount of time she spent with a client. On September 27, 2005, she received another written warning and a 30-day probation, because of a client complaint. The client told another staff member that on September 23, 2005, she felt "coerced" by the claimant to sign a document stating she had a doctor's appointment when she did not. She asserted Ms. Harris had told her she was "short of time" and had other things to do. This was investigated by the employer and then the claimant was issued the warning.

On October 12, 2005, a client complained to another staff member that Ms. Harris had only spent about 20 minutes in her home on October 10, 2005, then left to run some personal errands. She told the client that if anyone from Sunnybrook called to say that Ms. Harris was doing laundry or taking out the garbage, then to call her and she would call the employer back. The claimant was seen in the grocery store with her boyfriend and baby at 4:45 p.m., although she put down on her time sheet she had been at the client's home from 4:00 p.m. until 5:00 p.m. Although Ms. Harris asserted she was getting groceries for the client, she is not authorized to do shopping for clients as a home care aide. In addition, she did not submit a request for mileage reimbursement for this purported shopping trip for the client.

Ms. Watson was notified of the complaint by the staff member who received it, then she had a nurse visit with the client to confirm the times and dates. A nurse submitted her report on Friday, October 14, 2005, and the employer reviewed the claimant's time and mileage records. Owner Harley Carter was consulted on Monday, October 17, 2005, and the decision was made to discharge the claimant.

During the time of the investigation the employer received information from other staff members, including one whom the claimant had oriented, that she had consistently throughout the course of her employment run personal errands and then "shorted" the client visits. However, she had instructed at least one other staff member to put down an entire hour with a client when they had been there only 20 minutes. Another time she admitted to another staff member she had not visited the client the day before as scheduled but came the day after to "make up" the time.

The claimant was scheduled to attend a meeting with Ms. Watson on October 18, 2005, but she was ill and not available. The meeting was rescheduled for October 19, 2005, at which time she was discharged by Ms. Watson.

Stacy Harris has received unemployment benefits since filing a claim with an effective date of October 16, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised her job was in jeopardy as a result of her poor work performance, questionable activities, and incorrect time records. She was given a general warning along with the rest of the staff and two other personal warnings in the space of two months about her conduct. However, she did not rectify the problems and continued to turn in

time records which were inaccurate, reflecting she had spent the required amount of time with clients when she was, in fact, running personal errands.

Her actions exposed the employer to legal and financial liabilities from the government for fraud. The final incident was going to the grocery store on October 10, 2005, during a time she had put down she was at a client's home. Although she asserts she was doing shopping for the client, the administrative law judge does not find this to be supported by evidence in the record. The "coincidence" of meeting up with her boyfriend at the store strains the credulity, especially as it has been established she was in the habit of running personal errands while on the clock. In addition, as a home care aide she was not to be doing any personal errands for clients and, even if she had, she did not claim any mileage reimbursement.

The record establishes the claimant engaged in an on-going course of conduct to falsify time records, defraud the employer and the government agencies which provided funding, and "shorted" the clients on the cares she was to provide. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 9, 2005, reference 01, is reversed. Stacy Harris is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$1,659.00.

bgh/kjw