IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

THERESA TUVERA
Claimant

DAVIS COUNTY HOSPITAL
Employer

APPEAL NO: 07A-UI-05666-BT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/06/07 R: 03
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Davis County Hospital (employer) appealed an unemployment insurance decision dated May 29, 2007, reference 01, which held that Theresa Tuvera (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 24, 2007. The claimant participated in the hearing with Attorney Steven Gardner. The employer participated through Nola Pollmann, Chief Nursing Supervisor; Lois Westercamp, Human Resources Manager; and Attorney Tara Hall. Employer's Exhibits One through Ten were admitted into 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.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired full-time as a registered nurse on July 8, 1996 and was most recently working as the emergency room manager/house shift supervisor until she was discharged on May 4, 2007. On April 23, 2007 the employer received a complaint from a patient's mother regarding their visit to the emergency room on April 19, 2007. The claimant worked a 12-hour shift beginning at 7:00 p.m. and this mother brought her 15-year old son in to the emergency room at approximately 9:30 p.m. with a complaint of pain in the calf of his leg. The mother reported the left leg was reddened, swollen and warm to the touch. Once the patient was taken to an examination room, an EMT intermediary named Jill began an assessment while a paramedic named Lori began taking vitals. Jill noted on the patient's chart that his calf was painful, red, tender and swollen.

Lori walked out of the patient's room to complete paperwork and observed the claimant call Dorothy Cline Cambell, DO to report what she had heard about the patient. The claimant finished the call and told Lori that Dr. Cline said it was not an emergency and the patient needed

to be seen tomorrow at Dr. Cline's office because he was a MediPASS patient. Jill left the patient's room and the claimant told her that Dr. Cline said it was not an emergency. It appeared to Lori that the claimant was going to have Jill tell the patient what Dr. Cline had said so Lori told the claimant she needed to be the one to tell the patient. So, the claimant advised the patient and his mother that Dr. Cline declined to see them and if they were worried, they needed to go to the clinic the next day. The patient's mother stated that she was worried it could be a blood clot and asked the claimant if she did not have to worry but the claimant responded that she could not tell the mother it was not a blood clot. The mother was upset but left with her son. When the patient was seen the following morning, Dr. Cline sent him for a Doppler study which confirmed a diagnosis of thrombophlebitis with a blood clot in a superficial vessel. Dr. Cline told the patient's mother that she was not told the leg was red and swollen or she would have seen the patient that night.

MediPASS (Medicaid Patient Access to Service System) is a managed health care program for certain Medicaid patients who are covered under Title 19. Individuals are designated as MediPASS patients if they have frequented emergency rooms for non-emergency situations. A MediPASS patient is assigned to a primary care physician, advanced registered nurse practitioner, rural health center or federally qualified health center that serves as the patient manager. The patient manager is then responsible for providing all primary care, for referring the member to other levels of care, and for coordinating and monitoring necessary medical care. Anyone presenting to the emergency room is entitled to an emergency medical examination. However, in the case of a MediPASS patient, a referral to the emergency room must be made by the MediPASS provider unless it is designated as an emergency diagnosis by the Medicaid Program. Physicians staffing the emergency room cannot make the referral. If it is not an emergency diagnosis, contact must be made with the designated physician to explain the symptoms and how the patient presented to the emergency room. The physician determines whether the patient should go ahead and be seen in the emergency room or not. Services not authorized by the patient manager are not covered by Medicaid.

On May 1, 2007, Dr. Cline wrote a letter of complaint to the employer regarding the claimant's actions on April 19, 2007. She believed she was given incorrect information by the claimant about the emergency room patient's signs and symptoms and based her decision not to see the patient on that incorrect information. After seeing the patient the next morning, Dr. Cline concluded that the claimant could not have seen the patient the previous evening, nor had she conveyed the findings of the EMT that did see the patient. Dr. Cline reported that the claimant had obviously documented an exam that she did not perform by writing in the patient's emergency records, "Left calf examined by writer, no edema, injury or redness noted." It was directly above those comments that the EMT wrote her contrary findings as noted above.

The employer investigated the mother's complaint and found that three witnesses confirmed the claimant had not provided an adequate examination before she contacted the MediPASS physician. Furthermore, the claimant documented that she examined the patient and recorded those findings which were in conflict with the findings by the EMS personnel. The employer met with the claimant on May 4, 2007 and questioned her about this. The claimant first claimed that Dr. Cline asked if the patient walked in to the emergency room and when she confirmed he did, the claimant reported that Dr. Cline stated the patient could be seen the next day. The claimant then stated that the registered nurse frequently depends upon the initial assessment of EMS but when the employer asked why she did not report the findings as documented, the claimant explained that the EMS assessments often have to be double-checked. The claimant was discharged for falsifying hospital records and providing incorrect information to a physician, knowing that information would be used to make a medical decision on treatment. The employer advised the claimant her actions constituted a reportable incident according to the

Iowa Board of Nursing regulations and the employer was required to contact the Board of Nursing, which it did.

The claimant filed a claim for unemployment insurance benefits effective May 6, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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.
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> 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 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 claimant was discharged for falsifying hospital records and providing false medical information to a physician. She denies any wrongdoing and continues to claim that she examined the patient. However, the preponderance of the evidence indicates otherwise and the claimant's actions could have resulted in serious injury to the patient and/or legal liability to the employer. The claimant's actions were a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of

behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

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.
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> 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated May 29, 2007, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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 claimant is overpaid benefits in the amount of $2,274.00.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs