

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BENJAMIN S INENE**  
Claimant

**BEHAVIORAL TECHNOLOGIES CORP**  
Employer

**APPEAL 17A-UI-03988-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/12/17**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 29, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that the employer did not establish claimant was discharged for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephone hearing was held on May 5, 2017. The claimant, Benjamin S. Inene, participated. The employer, Behavioral Technologies Corporation, participated through Virginia Bradesh, Director; Bobbie Horton, Program Coordinator; and Stacey Anderson, Registered Nurse. Employer's Exhibits A through F was received and admitted into the record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a developmental specialist, from September 1, 2015, until March 9, 2017, when he was discharged for failing to follow a client's behavior and care program. On March 5, 2017, one of the employer's clients ("Client") was up walking around in his room unassisted. The employer testified that claimant should have been assisting Client with a gait belt. However, claimant was not doing this. Client fell down while he was walking unassisted, and he required medical care. Claimant testified that Client was not sleeping that night. Each time claimant heard Client moving around in his room, claimant got up and went into the room to assist him. However, when claimant entered the room, Client would sit down on the bed. Claimant testified that he could not put the gait belt on Client while Client was sitting down. Horton testified that she had verbally reminded claimant several times that he needed to use the gait belt when assisting Client. However, claimant did not receive any written

warnings for this issue. No one told claimant that he would be discharged if he failed to use the gait belt with Client again.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,842.00, since filing a claim with an effective date of March 12, 2017, for the seven weeks ending April 29, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential

liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Here, claimant did not receive any prior written warnings and he did not know that his job was in jeopardy for failing to use the gait belt with Client. Additionally, there is no indication that claimant refused to use the gait belt with Client or intended to put Client at risk of injury. The employer has not established that claimant was discharged for disqualifying misconduct. Benefits are allowed, provided claimant is otherwise eligible. As claimant's separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

**DECISION:**

The March 29, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/rvs