

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY K RAND
Claimant

APPEAL NO. 07A-UI-03996-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA DEPARTMENT OF HUMAN
SERVICES – AREA AND COUNTY**
Employer

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

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

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated April 9, 2007, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 5, 2007. The claimant participated personally. Participating on behalf of the claimant was her attorney, Mr. Richard Scott. The employer participated through Cheryl Roedermund, Hearing Representative, Ed Hermann and Mike Hodoly. Exhibit One was received into evidence.

ISSUES:

The issues in this matter are whether the claimant was discharged for misconduct in connection with her work and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from January 30, 1996 until February 19, 2007 when she was discharged from employment as a child and dependant adult protective worker. Ms. Rand was employed on a full-time basis and worked under the supervision of Mike Hodoly and Marjorie Strigel. The claimant was placed on administrative leave effective February 2, 2007, pending an investigation of the claimant's performance while conducting assessments of child and dependent adult abuse. The employer made a decision to further investigate Ms. Rand's performance when it was noted during the investigation of a serious case that a number of the statements in the claimant's reports appeared to be duplications or excerpts from different reports prepared by other individuals in the course of their duties. The claimant's failure to attribute the source of the statements that she placed in her assessments made the reports appear to be Ms. Rand's own work as the statements or excerpts were not attributed to the original authors. The employer considered the potential violation to be serious because the claimant held, a position of trust in assessing home visits and issuing assessments. The employer believed that the claimant's inclusion of observations

or statements which she did not personally make or witness resulted, a falsification of documentation and made the basis for her conclusions in her reports suspect.

In her position, the claimant was required to prepare numerous reports each month, make home visits, import her work product into the organization's computer systems and to perform her duties in a timely manner. Ms. Rand had been cautioned upon her return to the Mahaska County DHS office of the employer's expectation and was given a written directive concerning expected performance on September 22, 2006. On October 13, 2006, Ms. Rand was given additional coaching and counseling. On November 9, 2006, the claimant was given a written reprimand for failure to follow supervisory directives concerning employer's expectations.

At the conclusion of this investigation, the employer concluded that the claimant had included false and misleading statements in approximately six work documents by including statements or observations of others, at times word for word, without clarifying that the statements or observations were not Ms. Rand's or otherwise correctly attributing the source in her reports. The Department of Human Services concluded that the claimant failed to make her document a home visit and had not interviewed all children present in the home and further concluded the claimant had repeatedly copied other Department of Human Services workers' original work making it to appear to be Ms. Rand's own. Management also concluded that the claimant had continued to fail to make timely entries of documentation and follow other directives given by supervisory personnel. Ms. Rand was therefore discharged from employment.

It is the claimant's position that the use of information contained in other workers' reports is not prohibited and that at times the claimant's reports were similar to the reports of other workers because Ms. Rand received the same information during her investigations. It is the claimant's further contention that the use of similar phrasing in reports is a common occurrence and that similarities may have occurred because Ms. Rand "added" similar observations of others to her own observations. It is the claimant's further position that her immediate supervisor, during a previous conversation about "attribution," had instructed the claimant on how to use the system to "glean" information that had been in reports of other workers. Ms. Rand contends that as an "overworked" employee she was merely following the examples of what other workers did and that her supervisor had suggested how to use other workers' information.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record, that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Ms. Rand held the position of child and dependent adult protective worker, a position of trust with the Department of Human Services that required her to make home visits and to assess the vulnerability of children and at risk adults. The claimant received training in her job duties and knew, or should have known, that her reports and assessments were to be based upon her personal observations and/or interactions with the families involved. Although Ms. Rand was not prohibited from utilizing other information that might be available to other observers or reports of other workers, the employer reasonably expected that the source of such information be attributed in Ms. Rand's reports so that the Department could conclude what the source of the information was.

Although the administrative law judge is cognizant that Ms. Rand had a heavy workload and the employer's expectations were high, the administrative law judge must nevertheless conclude, based upon at times word-for-word duplication by Ms. Rand of the work of other individuals without attribution, her conduct was contrary to the employer's standards and reasonable expectations under the provisions of the Iowa Employment Security Act. The administrative law

judge concludes that the claimant knew, or should have known, utilizing the information of other workers without attribution would make the work product appear to be the claimant's own, when it was not.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was separated for misconduct in connection with her work. Benefits are withheld.

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.

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. The claimant is overpaid benefits in the amount of \$4,342.00.

DECISION:

The representative's decision dated April 9, 2007, reference 01, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times

claimant's weekly benefit amount, provided claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$4,342.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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