

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANITA FITE
Claimant

APPEAL NO: 12A-UI-02279-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 01/22/12
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed an unemployment insurance decision dated February 29, 2012, reference 01, which held that Anita Fite (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 March 22, 2012. The claimant participated in the hearing. The employer participated through Mary Eggenburg, Benefits Specialist and Terri Ballard, Nurse Manager. 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 employed as a full-time staff nurse from July 15, 1991 through December 23, 2011 when she was discharged for failure to provide the proper medical documentation for a nine-week absence. Her last day of employment was October 1, 2011 and she was on vacation from October 2, 2011 through October 19, 2011. Subsequent to that date, the claimant reported her absences almost every day but did not ensure the employer had the required medical documentation.

The claimant called the employer on October 20, 2011 to report her absence due to illness on October 21, 2011 and October 22, 2011. She testified she called the staffing office but the employer's records show the claimant spoke to Jessica Skullen and Ms. Skullen reported the claimant was very tearful and she was advised to contact Nurse Manager Terri Ballard on October 21, 2011. The claimant did not contact Ms. Ballard that day and while Ms. Ballard called the claimant, she did not reach her and was unable to leave a message.

The next scheduled work dates for the claimant were October 27, 28 and 29, 2011. The claimant testified she called the employer on October 26, 2011 but the employer's records confirm the claimant contacted the staffing office on October 27, 2011 to report her absences for these three days. The staffing office notified Ms. Ballard and Ms. Ballard advised them to send the Family Medical Leave Act (FMLA) paperwork to the claimant, which was done on October 29, 2011.

The claimant was scheduled to work on October 31, 2011 at 7:00 p.m. and she needed to report her absence by 3:00 p.m. but reported it at 4:00 p.m. She was next scheduled on November 3 and 4, 2011; she called Ms. Ballard on November 3, 2011 stating that she had been in and out of the hospital and was too weak to return to work. Ms. Ballard took the claimant off the schedule for both days but left her on the schedule for November 5, 2011 and advised her she needed to call in to the staffing office if she could not work since it was a Saturday and Ms. Ballard would not be there.

The employer had not received any medical documentation by that date. Ms. Ballard also advised the claimant on November 3, 2011 that her FMLA paperwork had not been received and was needed since it was an FMLA absence. The claimant stated that she had not received the FMLA paperwork because she had not "checked her mail since returning from vacation." She was a no-call/no-show on November 5, 2011.

The claimant called in her absence due to illness on November 7, 2011, and while the testimony was unclear, the employer believed she was next scheduled to work on November 10, 2011. Ms. Ballard called the claimant on November 8, 2011 but there was no answer and Ms. Ballard was unable to leave a message. Ms. Ballard tried to call her on November 9, 2011 but the claimant's phone had been disconnected. She testified that she did not pay the phone bill because she was in the hospital. The claimant called the staffing office on November 10, 2011 at 7:35 p.m. and signed off work due to surgery; she stated she needed that day off work for recovery. The claimant gave the staffing office her hospital room telephone number so Ms. Ballard could call her the next day.

Ms. Ballard reached the claimant on November 11, 2011 and advised her that the FMLA forms had not been received and the employer needed those forms. The claimant was given a fax number so that she could get that done while she was in the hospital. Ms. Ballard advised her that she was now on a leave of absence without pay. At the end of the conversation, the plan was for the claimant to possibly return to work on November 24, 2011, provided all the paperwork had been submitted.

On November 14, 2011, Human Resources Charlotte Depu sent the claimant a denial of leave under FMLA because the employer had not received any medical documentation. The claimant contacted the employer on November 21, 2011 stating she was not able to return to work on November 24, 25 and 26, 2011. Ms. Ballard took the claimant off those shifts and again advised her that no FMLA paperwork had been received. On November 29, 2011, Ms. Depu sent a letter to the claimant at her home address which advised her that she was on an unauthorized, unpaid leave of absence and needed to return the FMLA paperwork by 5:00 p.m. on December 7, 2011. Ms. Depu included with the letter an additional health certification form and a release to work form.

The claimant called Jessica Skullen on December 1, 2011 since Ms. Ballard was gone and said that she was not able to return to work on December 1, 2, 3 or 5th because her medical restrictions had not changed. The employer had no knowledge of what the medical restrictions

were since it had not received any medical documentation by this date. The claimant reported that she had a medical appointment on December 8, 2011.

Ms. Depu called the claimant on December 6, 2011 and left a message reminding the claimant that she needed to provide her paperwork by 5:00 p.m. on the following day. The claimant called Ms. Depu on December 7, 2011 to say that she had never received any letters or FMLA forms that had been sent to her. She asked Ms. Depu if she would send blank forms to the claimant's primary care provider and her surgeon's office. Ms. Depu said that was not typically done but went ahead and sent the faxes. She informed the claimant that the documentation must be returned that day and that the employer had to have a release before the claimant could be returned to her job duties. The employer did not receive any medical documentation from the claimant's health providers by the end of the day on December 7, 2011.

On December 9, 2011, Ms. Depu received an incomplete health verification form provided by the claimant's primary care provider. The document provided no dates of hospitalization, no treatment dates, no recovery dates and no information regarding follow-up or appointments.

The claimant called the employer on December 12, 2011 and spoke with Ms. Skullen. She said that she could return to work on Friday, December 16, 2011 for a four hour shift. Ms. Skullen told the claimant that the employer did not have the required paperwork and had to have a medical release before the claimant could return to work.

The faculty and staff in Disability Services made the determination on December 14, 2011 that there was not sufficient documentation to approve the claimant for FMLA coverage and recommended the employer proceed with termination due to an unauthorized leave of absence. Ms. Ballard, Ms. Depu, and Ellen Twainan from Human Resources met with the claimant on December 16, 2011 to discuss the situation. Since the claimant was a long term employee, the employer wanted to hear her side. She was advised that the employer did not have the required FMLA paperwork and that employees are accountable for ensuring that documentation is provided. The claimant brought a medical release to that meeting but the employer told her additional information was necessary. The claimant did not leave the medical release with the employer but took it back with her.

On December 20, 2011, Ms. Ballard told the claimant that a meeting was going to be held on December 22, 2011 to discuss the next step to be taken with regard to her employment. In the hearing, the claimant testified that she went to her physician on December 21, 2011 and threw a "hissyfit." She said she saw the FMLA papers were faxed to the employer but admitted she never called the employer afterward to confirm the documents were received. The employer called the claimant on December 22, 2011 to advise her that she could voluntarily quit or she was going to be terminated on December 23, 2011. The claimant never mentioned that her primary care provider had faxed documents to the employer on the day before and she never asked the employer whether the documents were received. The claimant called the employer on December 23, 2011 and stated that she was not going to quit. The employer had not received the required FMLA documents so the claimant was discharged and given the numbers to contact the benefit office.

The claimant filed a claim for unemployment insurance benefits effective January 22, 2012 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 § 96.5-2-a.

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.

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 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 due to an unauthorized leave of absence from October 20, 2011 through December 23, 2011. She was off work due to a non-work-related medical condition without providing the employer with adequate medical documentation to support that extended absence. The Family Medical Leave Act (FMLA) is a federal law that protects the jobs of eligible employees who may take up to 12-weeks off work due to serious health issues. Although FMLA was enacted to be an employee protection, it protects and provides rights for both the employee and the employer.

An employer has the right to require an employee to submit a doctor's certification that a medical leave is necessary and the right to require a fitness for duty certification from a doctor stating the employee is able to resume work. An employee must provide that medical

certification within a timely manner and failure to do so eliminates the job protection the Act provides. In the case herein, the claimant contends that she did not know that it was “so important” to provide the medical documentation or that her job was in jeopardy.

The claimant’s contention lacks merit. Any reasonable employee knows that medical documentation is required for extended absences due to medical reasons. However, even if she did not understand this expectation, the employer repeatedly notified her of this fact by phone and by mail. The claimant denied receiving the FMLA paperwork on November 5, 2011 because she had not checked her mail but she did not mention it again until December 7, 2011, which was the deadline for providing that documentation.

The employer went out of its way on December 7, 2011 to accommodate the claimant by faxing the FMLA paperwork to her health care providers. However, the employer again told the claimant the documents had to be provided that day but the deadline passed without being met. The claimant’s health care provider did submit incomplete documents on Friday, December 9, 2011 and the employer sent written documentation to the claimant on December 14, 2011 about the inadequacies of the medical certification. The claimant testified that she provided a medical excuse to the employer on December 16, 2011 but the employer would not accept it because they wanted “their forms” to be used. The employer was not merely being “picky” but was using the required forms for FMLA.

The claimant said she “saw” the doctor’s office faxing the information to the employer on December 21, 2011 yet she did not bother to call the employer to confirm receipt and did not question the employer about it when she was advised her employment was going to be terminated. The claimant’s failure to provide the required medical certification resulted in a nine-week unauthorized leave of absence. Her actions demonstrate a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer’s interests and of the employee’s duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant’s separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency’s initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated February 29, 2012, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs