

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA DONNELLY**  
Claimant

**APPEAL NO. 08A-UI-01303-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 12-30-07 R: 01**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 28, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 20, 2008. The claimant participated in the hearing. Allan Bruinsma, Administrator; Rachel Janik, DON; and Jennifer Coe, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three were admitted into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time MDS (Medicare) Coordinator for Care Initiatives from June 26, 2000 to January 4, 2008. On July 18, 2007, the claimant received a written warning and three-day suspension for multiple missed MDS reports which resulted in a loss to the employer of \$43,000 as the employer had to take a reduced payment because the reports were not turned in on time. The MDS reports are done at different times for different residents with long-term care residents done on a quarterly basis, Medicare residents assessed on the 5<sup>th</sup>, 14<sup>th</sup>, 30<sup>th</sup>, 60<sup>th</sup> and 90-day basis and then any significant changes are done quarterly. At the time of the warning and suspension the employer recognized the claimant needed help to perform the MDS reports and hired another person to help with the reports. The violation was a Type B and two Type B violations result in termination and the claimant was notified her job was in jeopardy if it happened again. The claimant was on vacation December 28, 2007, and the employer discovered two assessments were not completed. One was the claimant's to do and the other one was to be scheduled by the claimant for the other employee. The claimant's assessment had three out of five sections completed because the activities and dietary supervisors were off that week. The employer assigned others to complete those sections so the claimant could finish her assessments on that resident. When the employer discovered the assessment was not completed and could not find it on the claimant's desk, she called the

claimant at home December 28, 2007, and the claimant indicated the paperwork was done and on her desk. The employer looked for the hard copy the claimant usually left on her desk but was unable to locate it so she asked the claimant to come in and find the paperwork because it was due. The claimant came in and had to do the report because she could not find it. The employer talked to the claimant about the reports not being done before she took the vacation day after stating it was done before she left for vacation and insisting it was done when the employer called her at home. The claimant initiates entering the resident in the system so others can put their information into the computer. Because the claimant had not entered the resident into the computer the other employees that needed to contribute to the report could not enter their information. The late assessment resulted in a reduced payment to the employer and the employer terminated her employment.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant left for vacation and told the employer her assessments were complete at that time. On December 28, 2007, the employer discovered one of the claimant's assessments not done and after looking for it on her desk called her at

home when she again assured the employer the assessment was completed and on her desk. When she came in to finish the assessment the employer learned it had not been started and while the claimant testified she could not finish the report because the activity and dietician supervisors were not present that week the employer had assigned other personnel to cover for them and provide the information to the claimant but it appears the claimant was not truthful with the employer about having the assessment done before she went on vacation or when the employer called to ask where it was. The claimant had been warned and suspended for not completing several assessments in July 2007 and was told another Type B violation would result in termination. Consequently, she was aware her job was in jeopardy. The July 2007 situation caused a loss to the employer of over \$43,000.00 in reduced rates and after that loss the employer hired another employee to help the claimant with that task. If not for the incident in July 2007, the claimant would likely be eligible for benefits if the decision was based solely on the incident of December 28, 2007, as that could be considered an isolated incident of misconduct. Under these circumstances of failing to complete the July 2007 assessments and costing the employer \$43,000.00 in reduced rates, or the assessment by December 28, 2007, and not being honest with the employer about the situation, however, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). 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.

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 January 28, 2008, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 \$786.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css