

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GAIL A THOMPSON**  
Claimant

**APPEAL NO: 14A-UI-10473-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RED HAW FAMILY MEDICAL CENTER PC**  
Employer

**OC: 08/17/14**

**Claimant: Respondent (5)**

Section 96.6-2 – Prior Adjudication  
871 IAC 24.38(1)(c) – Full Faith and Credit to Another State’s Decision  
Section 96.5-2-a – Discharge  
Section 96.7-2-a – Employer Liability

**STATEMENT OF THE CASE:**

Red Haw Family Medical Center P.C. (employer) appealed a representative’s October 2, 2014 (reference 02) decision that concluded Gail A. Thompson (claimant) was qualified to receive unemployment insurance benefits and that Red Haw Family Medical Center, P.C. (employer) was subject to charge after a separation from employment. Hearing notices were mailed to the parties’ last-known addresses of record, for a telephone hearing to be held on October 28, 2014. The claimant received the hearing notice and responded by calling the Appeals Section on October 17, 2014. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, the claimant did not participate in the hearing. JoAnn Sundquist appeared on the employer’s behalf. During the hearing, Exhibits A-1 through A-4 and Employer’s Exhibits 15 and 16 were entered into evidence. The record was closed at 12:30 p.m. At 12:55 p.m. the claimant called the Appeals Section and requested that the record be reopened. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is there a prior determination on the merits of this appeal that is binding on the parties and the outcome of this appeal?

Is the employer’s account subject to charge?

**FINDINGS OF FACT:**

The claimant began working for the employer in Iowa on October 11, 2013. She worked full time as an accounts manager. Her last day of work was January 24, 2014. The employer discharged her as of that date. The stated reason for the discharge was poor work performance and having too many errors. The employer had not given the claimant any formal warnings

regarding her performance. The clinic manager who discharged the claimant made a statement on February 24, 2014 to the effect that in the claimant's final 30 days of employment "her performance was so bad that I don't think she was ever able to meet the company standards here. I don't believe that her actions were intentional or malicious at all but believe that it was a matter of staying focused on the job."

After the claimant's employment ended, she established an unemployment insurance claim in Wisconsin effective the week ending January 25, 2014 because she had no base period wages in Iowa upon which a claim could be based. A Wisconsin claims examiner issued a decision on February 26, 2014. This decision concluded the claimant was discharged but not for misconduct. Under Wisconsin law, the claimant was allowed benefits. The employer could not appeal the Wisconsin decision because the Wisconsin agency explicitly refused to send the employer a copy of the decision as the employer was not adversely affected and had no monetary interest in the outcome of the case at that time.

After the claimant exhausted her eligibility under the Wisconsin claim, she established a new claim for benefits in Iowa effective August 17, 2014 premised upon the new base-period wages. The employer is a base-period employer on this subsequent claim and timely protested the claimant's receipt of benefits and any charges against its account.

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

While the claimant did make a late call to participate in the hearing after the record was closed, the administrative law judge will not further address the possibility of reopening the record as the outcome in this decision is still favorable to the claimant.

The rights of a claimant under a combined wage claim shall be determined by the paying state after combining of all wages available from the transferring state, however, in the case in which another state transfers wages to Iowa and Iowa is the paying state, Iowa cannot again adjudicate a separation that has been previously adjudicated by the transferring state. The department shall respect the prior adjudication of the transferring state if the Department is aware of the decision and will apply the Iowa requalification criteria, unless the claimant has requalified pursuant to the liable state's requalification criteria. Rule 871 IAC 24.38(1)(c). However, in this case, neither the Wisconsin claim nor the Iowa claim were combined wage claims, in that neither state transferred wage credits to the other for use in determining the claimant's eligibility. Further, part of the principal that an adjudication cannot be challenged in another state is that the interested party was provided with notice of the decision and could have appealed that decision in the subject state; here, it appears that the employer was not treated as an interested party in Wisconsin and it did not have an opportunity to appeal. There is some question as to whether the Wisconsin adjudication therefore has the same effect in Iowa as an adjudication which was on a combined wage claim and in which the employer did have a right to appeal.

The separation at issue was previously adjudicated by a Wisconsin authority. Even assuming that the Wisconsin decision is final and binding regarding the claimant's eligibility to receive unemployment insurance benefits, the issue of whether the employer's account is subject to charge in Iowa has never been addressed.

An employer's account is relieved from charge when a claimant voluntarily quits without good cause or an employer discharges her for work-connected misconduct. Iowa Code §96.7-2-a. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979).

The gravity of the incident and the number of prior violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional violation. There is no evidence the claimant intentionally worked below her abilities. While the employer may have had a very good business reason for discharging the claimant, this is not the same as misconduct. Under Iowa law, the employer did not establish that it discharged the claimant for work-connected misconduct. Since the employer discharged the claimant, but not for work-connected misconduct, the employer's account is subject to charge.

**DECISION:**

The representative's October 2, 2014 (reference 02) decision is modified with no effect on the parties. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is subject to charge.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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