

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER R MILLER
Claimant

APPEAL NO: 13A-UI-12959-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

OC: 10/20/13
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 13, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Dr. Earl Kilgore and Julie Kilgore appeared on the employer's behalf. During the hearing, Employer Exhibits One through Six were offered and admitted as evidence. Based on the evidence, the employer's arguments and the law, the administrative law judge concludes the claimant is not qualified to receive benefits and has been overpaid benefits.

ISSUES:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

Has the claimant been overpaid benefits?

Did the employer participate at the fact-finding interview?

FINDINGS OF FACT:

The claimant started working for the employer in August 2011. The claimant worked as a full-time supportive community living worker.

During her employment, the claimant received several warnings regarding her attitude and inappropriate comments toward clients and co-workers. The claimant received a memorandum of understanding on February 11, 2013, for disclosing personal information to a client. (Employer Exhibit Three.) On May 2, 2013, the claimant received a written disciplinary notice for inappropriate client interactions on March 25 and April 8, 2013. The notice also addressed the claimant's use of profanity at work. The employer warned the claimant that if there were similar incidents in the future, she could be discharged. (Employer Exhibit Two.)

On September 5, the employer put the claimant on performance probation. The probation informed the claimant she must conduct herself professionally at all times. The employer also warned her that if she received any disciplinary action during her probation, she could be discharged. (Employer Exhibit Four.)

On October 10, a client complained that the claimant had been confrontational and disrespectful to the client. After investigating the complaint, the employer concluded the complaint was valid. (Employer Exhibit One.) On October 17, the claimant was rude to Dr. Kilgore, the head of her department. One of the claimant's clients apologized for the claimant's conduct and made the comment that she was sometimes grumpy. As a result of the claimant's inappropriate conduct in Dr. Kilgore's presence, he reviewed her personnel file and discovered warnings for similar disrespectful behavior. The employer then decided the claimant exhibited a pattern of rude and inappropriate behavior toward clients and co-workers. The employer discharged the claimant on October 21, 2013.

The claimant established a claim for benefits during the week of October 20, 2013. She filed for and received a gross benefit payment of \$808 for the weeks ending November 2 through 23, 2013. The employer participated at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the claimant's behavior was so inappropriate on October 17, that one her clients apologized for her behavior. The employer required the claimant to act as a role model and be respectful to everyone, clients and co-workers. Since the claimant had already been warned about her rude and inappropriate conduct, Dr. Kilgore concluded that her October 17 was not an isolated incident. Instead, this was just another incident where the claimant was rude and disrespectful. As result of her continued inappropriate conduct, the employer discharged the claimant. The claimant's October 17 conduct amounts to a violation of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of October 20, 2013, the claimant is not qualified to receive benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the

employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b.

Based on the decision in this case, the claimant is not legally entitled to receive benefits as of October 20, 2013. She has been overpaid a total of \$808 in benefits she received for the weeks ending October 23 through November 23, 2013. Even though the claimant is not at fault in receiving the overpayment, the employer participated at the fact-finding interview so the claimant is legally responsible for paying back \$808 in benefits that she was not entitled to receive.

DECISION:

The representative's November 13, 2013 determination (reference 01) is reversed. The employer discharged the claimant for reasons that amount to work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 20, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible.

The claimant has been overpaid a total of \$808 in benefits she received for the weeks ending November 2 through 23, 2013. The claimant is required to pay back \$808 to the Department.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs