

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA REPPE**  
Claimant

**APPEAL NO: 09A-UI-06863-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 03-22-09**  
**Claimant: Respondent (2R)**

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 April 23, 2009, 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 June 17, 2009. The claimant participated in the hearing. Angie Kopriva, DON; Kristen Dunlap, Administrator; and Alyce Smolsky, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four 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 full-time RN for Care Initiatives from November 27, 2007 to March 23, 2009. On October 8, 2008, the claimant received a verbal warning for failing to give a resident the medication ordered by his physician resulting in a medication error (Employer's Exhibit Three). On November 20, 2008, the claimant received a written warning for failing to do a scheduled dressing change (Employer's Exhibit Two). On March 19 and 20, 2009, the claimant failed to give five residents their medication resulting in five medication errors. She was suspended March 21, 2009, while the employer further investigated the situation and her employment was terminated March 23, 2009, for medication errors (Employer's Exhibit One). The claimant demonstrated she was capable of performing her job to the employer's expectations on most occasions but the employer believes she was careless on the dates of the medication errors. At the time of the termination the claimant said she was overwhelmed, was dealing with some personal issues, did not feel well and maybe should have called in sick that last week. She testified she had problems controlling the CNA's and getting them to perform their duties which made her job more difficult and caused her a great deal of stress and extra work.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

### **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 made a total of six medication errors with five of those occurring March 19 and 20, 2009. She received a verbal warning about her first medication error in October 2008 and a written warning for failing to change a resident's dressing in November 2008. She was aware her job was in jeopardy after that warning because it stated she needed to "ensure treatments and meds are completed and signed correctly or this will result in further write ups – up to and including termination." While the claimant's job was stressful and she had a difficult time controlling the CNAs and getting them to perform their duties as the employer expected, it was part of her job to do so. She had demonstrated that she was capable of performing her job but her carelessness, especially on April 19 and 20, 2009, could have resulted in significant problems for the residents who did not receive their medication. Under these circumstances, the administrative law judge concludes the employer

has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits must be denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The April 23, 2009, 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 has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/css