

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON L CHRISTENSEN
Claimant

APPEAL NO. 06A-UI-10389-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 09/24/06 R: 03
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Care Initiatives, filed an appeal from a decision dated October 18, 2006, reference 01. The decision allowed benefits to the claimant, Sharon Christensen. After due notice was issued, a hearing was held by telephone conference call on November 8, 2006. The claimant participated on her own behalf. The employer participated by Activity Director Mary Vicker and Administrator Selina Selsor and was represented by TALX in the person of Mike Slone. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Sharon Christensen was employed by Care Initiatives from June 15, 2000 until September 27, 2006. She was the full-time activity coordinator. During the course of her employment the claimant received the employer's policies and procedures which prohibit an employee from punching anyone else's time card, or asking another employee to punch their time card for them. In addition, there is a sign at the time clock which reminds employees of this policy and notifying everyone it is a dischargeable offense.

Ms. Christensen received a final written warning on March 24, 2006, for violation of a resident's rights. The warning notified her that any further infractions would lead to discharge. On September 27, 2006, the claimant was running errands for the residents. She called her subordinate, Mary Vicker, and asked her to "sneak down" to the time clock and punch her out so she would not go over her 30 hours. Ms. Vicker did so but then realized it was not appropriate. She reported the incident to Administrator Selina Selsor.

When the claimant returned to the facility, Ms. Selsor questioned her about it and she admitted to making the request to Ms. Vicker but seemed to feel it was not out of order because "everyone did it." She was discharged by the administrator at that time.

Sharon Christensen has received unemployment benefits since filing a claim with an effective date of September 24, 2006.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised her job was in jeopardy if there were any further infractions or violations of employer policy. On September 27, 2006, she deliberately violated a known policy by requesting a subordinate to punch her time card for her. The claimant's assertion she asked Ms. Vicker to ask the administrator for permission to punch her time card for her is not credible. If that were true, the claimant could have asked Ms. Selsor for permission directly instead of having her subordinate do it. The record establishes the claimant was in violation of the time card policy. In conjunction with her prior warning, this was a final incident of misconduct and she is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 18, 2006, reference 01, is reversed. Sharon Christensen is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,702.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw