

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TYESHA M ALLEN**  
Claimant

**APPEAL NO: 07A-UI-04415-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EMPLOYMENT SERVICES**  
Employer

**OC: 04/01/07 R: 04  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Heartland Employment Services LLC (employer) appealed a representative's April 20, 2007 decision (reference 01) that concluded Tyeshia M. Allen (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 16, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Bill Rose represented the employer and Jenifer Egesdal testified on the employer's behalf. 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:**

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

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer the August 16, 2006. The claimant worked as a full-time certified nursing assistant.

On March 1, 2007, three residents made three different complaints about the claimant. Resident 1 reported that the claimant left her alone and unattended in the shower room and the claimant was rude and short with her. The claimant not only startled Resident 1, but also scared her. Resident 1 did not like it when the claimant worked because the claimant snapped on the resident's light and yelled that it was time for her to get up.

Resident 2 reported the claimant would come into his room to help him and then leave. Even though the claimant told him she would be right back to help him, she did not come back.

Resident 3 reported that the claimant would ask to read his newspaper, but did not return his newspaper or anything else she asked to borrow. The claimant also told Resident 3 that he could make his own bed.

Egesdal asked three department heads to talk to the three residents to verify the report they made to Egesdal. After the residents reported the same problems, the employer concluded the claimant abused the residents by neglecting them. Pursuant to the employer's policy the employer discharged the claimant for abusing the residents on March 3, 2007.

The claimant established a claim for unemployment insurance benefits during the week of April 1, 2007. The claimant filed claims for the weeks ending April 7 through May 19, 2007. The claimant received her maximum weekly benefit amount of \$164.00.

#### **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 section 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the evidence presented during the hearing, the claimant committed work-connected misconduct by neglecting residents the employer hired her to care for. Therefore, as of April 1, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending April 7 through May 19, 2007. The claimant has been overpaid \$1,148.00 in benefits she received for these weeks.

#### **DECISION:**

The representative's April 20, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 1, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for

insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending April 7 through May 19, 2007. The claimant has been overpaid and must repay a total of \$1,148.00 in benefits she received for these weeks.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs