

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALESON MATHES**  
Claimant

**APPEAL NO: 09A-UI-03362-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 01-18-09**  
**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 February 18, 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 March 26, 2009. The claimant participated in the hearing. John Bridges, Environmental Supervisor; John Gacke, Previous Administrator; Matt Smith, Administrator; and Alyce Smolsky, Employer Representative participated in the hearing on behalf of the employer. Employer's Exhibits One through Five 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 part-time housekeeper for Care Initiatives from February 25, 2008 to January 19, 2009. On May 30, 2008, the claimant received a verbal warning and was reeducated after a resident complained for the second time that the claimant did not empty the trash can or sweep or mop the floor (Employer's Exhibit Four). On August 10, 2008, the claimant received a verbal warning for failure to sign out for her break and received a written warning for failure to sign out for her break August 14, 2008 (Employer's Exhibit Three). The written warning of August 14, 2008, also stated that the claimant sat down and watched the floor dry after it had been mopped so residents did not fall instead of standing as required (Employer's Exhibit Three). On October 31, 2008, she received a final written warning for reading a newspaper 30 minutes before the end of her shift and leaving the Alzheimer's unit without proper cleaning supplies (Employer's Exhibit Two). The activities director asked the claimant if she was waiting to clock out and she said, "Yes," and the activities director asked her to clean off some tables but she neglected to do so (Employer's Exhibit Two). On January 18, 2000, the claimant was expected to help pass breakfast trays to residents. The employer received complaints from her co-workers that instead of passing trays the claimant sat on a stool and did nothing. She then went to the restroom for a lengthy period of time. The employer

investigated the incident and took statements from two of her co-workers who stated she was sitting down instead of passing trays. The claimant admitted that she took a 30-minute break but denied that her co-worker passed most of the trays. After reviewing the evidence following the investigation the employer terminated the claimant's employment in accordance with its progressive disciplinary process (Employer's Exhibit One).

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). Two co-workers reported that the claimant sat down instead of passing breakfast trays January 18, 2009. While the claimant admitted taking a 30-minute break that day she denies that her co-worker passed most of the trays. The claimant received a verbal warning May 30 and August 10, a written warning August 14, and a final written warning October 31, 2008. The employer followed its progressive disciplinary policy and the claimant knew or should have known that her job was in jeopardy after she received the final

written warning. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are 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 February 18, 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 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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