MICHELE ROEHLK
Claimant

CARDIOVASCULAR MEDICINE PC
Employer

APPEAL NO. 14A-UI-10648-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/14/14
Claimant: Respondent (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Cardiovascular Medicine, PC (employer) appealed an unemployment insurance decision dated October 2, 2014, (reference 01), which held that Michele Roehlk (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 3, 2014. The claimant provided a telephone number but was not available when that number was called for the hearing, and therefore, did not participate. The employer participated through Lindsay Heinrichs, Human Resources Coordinator; Pat Ragan, Supervisor; and Kris Zeller, Practice Administrator. Employer's Exhibits One through Six were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant received the hearing notice for the hearing scheduled on November 3, 2014, and provided a telephone number prior to the 9:30 a.m. hearing. The employer called the Appeals Bureau on October 31, 2014, and left a message that the claimant had provided HIPAA protected medical documents to the Appeals Bureau. The administrative law judge returned the call to the employer on October 31, 2014, and suggested the employer contact the claimant to request she return the confidential documents.

The claimant was called for the hearing but did not answer her telephone number and a message was left advising that the hearing was going forward. The employer advised that the claimant had returned the confidential documents to the employer on Friday night and promised she did not have any copies of these documents. The administrative law judge had the employer identify the confidential documents, which were pulled out of the claimant's documents and destroyed. The claimant did not contact the Appeals Bureau to indicate she

wanted her statements to be considered in lieu of participation and the remaining documents she provided were not considered as evidence since she was not available to identify and introduce them. The claimant called the Appeals Bureau at 4:09 p.m. on November 3, 2014, and said that she sent in a statement. She provided a new number and the administrative law judge returned the call at 4:38 p.m. on November 3, 2014. A child answered and said his mother was at work but before a message could be left, the line was disconnected. The administrative law judge dialed the number again but there was no answer. The claimant had not called the Appeals Bureau as of Thursday, November 6, 2014, by 4:30 p.m., so a decision was issued on November 7, 2014.

The claimant was hired as a full-time phone operator on September 4, 2007, but most recently worked as a health information management chart prepper. She was discharged on September 16, 2014, for a repeated failure to follow directives. The claimant's primary job responsibility was to prepare patient medical records for the office visit with the provider. She had to gather all pertinent medical information prior to the patient's appointment and she had a check list to follow so that nothing would be forgotten.

The claimant was placed on probation on December 26, 2013, for errors in chart preparation, which resulted from not following the outlined directions. She admitted she understood the directions but additional errors were found on April 15, 2014 and May 2, 2014. The claimant was placed on a final 90-day probation on June 17, 2014, and advised her job was in jeopardy. She told her supervisor after the meeting that she did not feel it was her job to read the letters from the referring doctor's office since she believed the CVM providers should read the letters and inform her whether the tests were needed for review. There were numerous and repeated errors revealed in the July and August 2014 record audits.

A patient went to see CVM physician on September 3, 2014 and the records were faxed from a referring doctor's office. These records indicated the patient had an angiogram six years prior to the appointment and that she had a defibrillator last year. The claimant did not obtain these records so the information was not available to the provider at the time of the appointment. The claimant had the proper training and knew what was required of her but even after repeated warnings, she failed to follow the directions for chart preparation.

The claimant filed a claim for unemployment insurance benefits effective October 2, 2014, and has received benefits after the separation from employment in the amount of $1,165.00. Human Resources Coordinator Lindsay Heinrichs and Supervisor Pat Ragan participated in the fact-finding interview on behalf of the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1)**.**

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on September 16, 2014, for a repeated failure to follow directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant was capable of

performing her job duties and knew her job was in jeopardy but refused to do what was directed. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. *See* Iowa Code § 96.3-7.

The claimant received benefits in the amount of $1,165.00 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. *See* 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

DECISION:

The unemployment insurance decision dated October 2, 2014, (reference 01), is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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 is overpaid $1,165.00 in unemployment insurance benefits.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/css