

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY L PARRISH
Claimant

APPEAL NO. 12A-UI-02133-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRESTVIEW MANOR LTD
Employer

OC: 01/22/12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Crestview Manor, filed an appeal from a decision dated February 28, 2012, reference 01. The decision allowed benefits to the claimant, Amy Parrish. After due notice was issued, a hearing was held by telephone conference call on March 20, 2012. The claimant participated on her own behalf and with Thomas Follet. The employer participated by Assistant Administrator Charlotte Sherman, DON Stacy Geopfert and ADON Tammy Greenfield.

ISSUE:

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

FINDINGS OF FACT:

Amy Parrish was employed by Crestview from October 20, 2011 until January 23, 2012 as a full-time CNA. She received warnings for attendance, poor work performance, failure to follow instructions, using the copy machine without authorization and not punching in and out when she left the facility during her shift. The final warning was given on January 17, 2012, which outlined the problems, notified her she had to improve and stating the next step would be discharge if there were any other rule violations in the next 90 days,.

On January 20, 2012, Ms. Parrish was told by the charge nurse to put a resident to bed after she had come back from a medical appointment and this was not done. She did not have all her residents in the dining room by 5:00 p.m. for dinner and was seen by ADON Tammy Greenfield sitting at a table to one side of the dining room with her head in her hand. She was supposed to be circulating throughout the dining room to keep an eye on residents and assist anyone who needed any help. This was reported to DON Stacy Geopfert and the claimant was discharged on January 22, 2012, after a review of her disciplinary history.

Amu Parrish has received unemployment benefits since filing a claim with an effective date of January 22, 2012.

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 as a result of her continuing failure to perform her job duties as required and to follow the policies and procedures established by the employer. Ms. Parrish always seemed to have a good reason for not doing as she was told, that other people were not available to help her, although she never used the call light in the residents' rooms to summon help. Her assertion that she was trained by others to sit in the dining room and observe but not circulate is incorrect because the duty roster quite plainly specifies the work assignments in the dining room and "circulate" is among them for the claimant.

Her belief that if she filled out a "variance" form to correct her failure to punch in and out, then she would not be disciplined for tardiness or leaving the building without punching out. This is quite clearly not the case as the published rules of the employer states tardiness will still be considered a disciplinary offense. Ms. Parrish asserted she did not have a copy of the rules, even though she had signed them, but admitted she never requested a copy from anyone. She maintained this was not done because everyone, Ms. Sherman, Ms. Geopfert and Ms. Greenfield, all "intimidated" her because they had given her warnings. The secretary in the office did not "intimidate" her but she never asked that person to get her a copy of the rules.

Overall the record establishes the claimant simply would not do the work she was assigned to do, would not communicate with any of the managers, and would also ignore the specific rules, postings and assignments which were provided to her. Overall the record establishes the claimant simply would not do the work she was assigned to do, would not communicate with any of the managers, and would also ignore the specific rules, postings and assignments which were provided to her. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified,

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 28, 2012, reference 01, is reversed. Amy Parrish is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css