

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CYNTHIA BILLINGS

Claimant

APPEAL NO. 14A-UI-11823-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREAT RIVER MEDICAL CENTER

Employer

OC: 10/19/14

Claimant: Respondent (2)

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

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Great River Medical Center (employer) appealed an unemployment insurance decision dated November 4, 2014 (reference 01) which held that Cynthia Billings (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 December 8, 2014. The claimant participated in the hearing with Attorney Kenneth Weiland. The employer participated through Christ Ford, Human Resources Generalist, and Shana Augsburger, RN Manager. Employer's Exhibits One through Five 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 previously worked for the employer from 2004 through 2008. She was subsequently hired on June 1, 2009 as a full-time licensed practical nurse and worked until October 16, 2014 when she was discharged for repeated medication errors and failure to complete her action plan. She received two written warnings in 2013 for medication documentation errors. A written warning was issued on October 22, 2013 for the claimant giving medication on two separate dates but not documenting the medication chart (MAR). A second written warning was issued on November 19, 2013 for not initialing that a narcotic had been given on October 30, 2013.

The claimant received a final written warning on July 29, 2014 for administering an incorrect dose of medication to a resident on 16 different days. She received a second final written warning and suspension on September 25, 2014 after she administered an incorrect dose of medication on three dates. The employer assigned the claimant to read three medical articles related to poor patient outcomes resulting from improper medication administration.

After reading the articles, the claimant had to write summaries and explain how she planned to change her practices to avoid medication errors in the future. The summaries had to be turned in by October 9, 2014 which gave her two weeks.

The claimant failed to turn in the summaries and the employer questioned her about it on October 15, 2014. She said she had not completed the task because she had been really busy and did not have access to the internet at her home. The employer asked if she could turn them in by the following day and the claimant said, "I guess I could get out tomorrow." The claimant asked what it was that she was supposed to be doing. The employer explained it and asked the claimant if she had the final written warning with the action plan, which she admitted she did. The claimant failed to turn in the summaries and was discharged as a result.

The claimant filed a claim for unemployment insurance benefits effective October 19, 2014 and has received benefits after the separation from employment in the amount of \$2160. Christy Ford, Shana Augsburger, and Ann Hannum 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 October 16, 2014, for repeated medication errors and failure to follow through on an action plan listed on her second final written warning. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. 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 \$2160 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 November 4, 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 benefits in the amount of \$2160.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/can