

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JESSICA M PALMER
Claimant

APPEAL NO: 19A-UI-01354-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

OC: 01/13/19
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Benefit Overpayment

STATEMENT OF THE CASE:

Broadlawns Medical Center, the employer, filed a timely appeal from a representative's unemployment insurance decision dated February 7, 2019, (reference 03) which held claimant eligible to receive unemployment insurance benefits, finding that the claimant was dismissed from work on January 11, 2019 for unsatisfactory work. After due notice was provided, a telephone hearing was held on March 1, 2019. Claimant participated. Employer participated by Ms. Julie Kilgore, Susan Kristein and Lance Schmitt. Employer's Exhibits 1 through 8 were admitted into the hearing record.

ISSUES:

The first issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

The second issue is whether the claimant has been overpaid unemployment insurance benefits.

The third issue is, if the claimant has been overpaid unemployment insurance benefits, is the claimant liable to repay the overpayment or should the employer be held chargeable, based upon the employer's participation in the fact-finding interview.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Jessica Palmer was employed by Broadlawns Medical Center as a registered nurse in the medical center's birthing and newborn center until January 11, 2019, when she was discharged from employment. Ms. Palmer worked on a full-time basis and was paid by the hour.

Ms. Palmer was discharged after the medical center had received a complaint on January 7, 2019 that Ms. Palmer had failed to ensure that a patient who was in prolonged labor was provided a specific medication that had been prescribed by her physician. The patient and family members complained that although the doctor assigned to the patient's care had

prescribed Pitocin for the patient, Ms. Palmer failed to communicate to staff members during the shift change meeting that the medication had been prescribed.

Broadlawns hospital investigated and determined that the patient's doctor had prescribed the medication during Ms. Palmer's work shift, but that the claimant had either negligently or intentionally failed to inform the nurses on the next shift of the prescribed medication, and that as a result, the patient may have endured labor for a prolonged period and that the patient ultimately was required to have a C-section.

Based upon statements made by the patient and her family, the employer concluded that Ms. Palmer had made statements to the patient intended to dissuade her from requesting or taking the Pitocin. As a registered nurse, Ms. Palmer had the obligation to administer medications ordered by physicians and to ensure that doctor ordered medications are administered and properly documented in electronic and paper systems, and to keep other medical personnel informed of the medications, practices, or procedures ordered by the physicians or changes in them. In addition to the use of electronic systems to document medical records, doctor's orders, and changes, nursing personnel are expected to provide this information to nursing staff personnel replacing them on the night shift via patient report meetings held at the time of shift changes.

Ms. Palmer was aware of her job obligations. The nursing staff are not allowed to substitute their judgment or voice advice contrary to doctor's orders to patients. Ms. Palmer had been counseled on October 22, 2018 when she had not followed patient care requirements. On November 5, 2018, Ms. Palmer was counseled about the quality of care that she was providing. On November 26, 2018, claimant was warned regarding the quality of patient care and deficiencies in charting and failure to follow protocol.

Ms. Palmer agrees that a doctor ordered prescription for Pitocin took place prior to the end of her work shift, but had not been communicated by her to the next work shift either via patient report meeting or electronically, as required by hospital protocol. Ms. Palmer believes that the intern assigned to the patient in question, may have changed the order for Pitocin during the last one half hour of Ms. Palmer's work shift, but she had not checked for any changes because she believed that the intern had indicated that there would be no changes. The claimant further asserts that although she believes Pitocin should be used only as choice after others are exhausted, that she did not make any negative statements about the drug in the presence of the patient or her family.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes work-connected misconduct on the part of the claimant sufficient to warrant the denial of job insurance benefits. It does.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand, the claimant was discharged after the employer concluded that the claimant had engaged in making comments to a patient and her family members about the negative aspects of a particular drug being prescribed to help a patient during the labor process, and because the claimant's failure to properly document and inform the next nursing work shift of the doctor's orders for the drug caused a substantial delay in the birth of the baby and the use of surgery for the birth.

The evidence in the record establishes that the patient and her family made specific complaints about Ms. Palmer's conduct specifically identifying Pitocin as a prescription drug that should be used only as a last resort. The evidence also establishes that the physician assigned to the patient did in fact prescribe Pitocin during Ms. Palmer's work shift, but the claimant neglected to properly document the order or to inform the next nursing shift staff during a patient report meeting held specifically for those types of purposes. The claimant did not follow the required nursing protocols because in part, she "assumed" that no changes had been made in the doctor's orders during the last portion of her work shift and the claimant relied upon her assumption instead of following the required protocol that was designed in effect, to ensure that the next nursing staff was following doctor's orders and not the assumptions of previous staff. Ms. Palmer had previously been warned about failing to follow protocol and warned about

unsatisfactory patient care, and was aware of the protocol required. Claimant's conduct constitutes work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has received unemployment benefits in the amount of \$2,645.00 since filing a claim with an effective date of January 13, 2019 for the benefit weeks ending February 2, 2019 through March 2, 2019. The administrative record also reflects that the employer did participate in the fact-finding interview and make a first-hand witness available for rebuttal.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's unemployment insurance decision dated February 7, 2019, reference 03, is reversed. Claimant was discharged for work-connected misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount \$2,645.00 and is obligated to repay this amount to Iowa Workforce Development. The employer's account shall not be charged, based upon the employer's participation in the fact-finding interview.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn/rvs