

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER BRUGGEMAN
Claimant

APPEAL NO: 12A-UI-03727-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAINSTREAM LIVING INC
Employer

OC: 02/12/12
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Mainstream Living, Inc. (employer) appealed an unemployment insurance decision dated March 30, 2012, reference 01, which held that Jennifer Bruggeman (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 April 25, 2012. The claimant participated in the hearing. The employer participated through Carissa Lewis, Director of Human Resources; LuAnn Wingfield, Vice-President of Operations; and Marcanne Lynch, Human Resources Manager. Intern Amy Gwon was present for the hearing but did not participate. Employer's Exhibits 1 through 21 and Claimant's Exhibits A through D were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a certified med aide on April 24, 2001 but became a program administrator on March 3, 2003. She worked in this capacity until February 10, 2012 when she was suspended, after which she was discharged on February 15, 2012. The employer is a social services organization that provides services to persons with disabilities. The claimant was the administrator to one of the employer's ten bed residential care facilities (RCF) for persons with mental illness (PMI). This position involved the program oversight of the RCF-PMI Program whose primary function is to assure that the residents are receiving care in accordance with their Individualized Program Plan (IPP) and that the program meets the standards defined by the regulating bodies. The employer's services are accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) and are governed by Iowa Code Chapter 62.

The employer discharged the claimant for her failure to abide state regulations to keep the employer and the RCF-PMI Program in compliance; failure to ensure the HIPAA releases were updated; failure to follow company and OSHA protocol regarding potential exposure to a blood born pathogen; and failure to follow the expectations and deadlines set forth in her probation.

The claimant received a written warning on June 2, 2008 for failure to provide proper documentation and billing information. This resulted from two corporate compliance audits completed on the claimant's facility prior to a federal audit by the Office of the Inspector General (OIG). The error rate for specific residents ranged from 42 percent to 100 percent which was unacceptable. The audits were performed on May 2, 2008 and May 30, 2008. The warning provided the claimant with ten specific items to follow up on. An additional warning was issued on December 2, 2009 for the same issues.

The employer issued a performance summary on January 11, 2012 and placed the claimant on probation on January 19, 2012 for a minimum of 90 days. There were seven areas in which the claimant was negligent in carrying out her duties.

1. **Filing and Mail.** No paperwork had been filed since November 2010, there were piles of paperwork and unopened mail stacked on top of the filing cabinet. The piles included payee reports, multiple un-cashed checks from pharmaceutical companies, NOD's and plans. The claimant told her supervisor in October 2011 that she needed more clerical support and her supervisor asked that she write up a needs based proposal based on her current budget but that was never provided.

2. **Quarterly Reports.** The claimant failed to complete quarter reports for a particular resident and in mid-October 2011, this resident's case manager was not going to reauthorize services or send an updated plan until the quarterly reviews were done. Vice President of Operations LuAnn Wingfield spoke to the claimant's supervisor and asked that he speak with the claimant about getting these overdue quarterlies done. When they were still not done, Ms. Wingfield sent email requests on November 16, November 28, and December 6, 2011. The quarterly reports were finally completed on December 7, 2011.

3. **Goal Summary Sheets.** Goal summary sheets are part of the staffing packet and should be completed each time the Inter-Disciplinary Team (IDT) meets. The form serves as a sign-in sheet, a record of goals and ongoing support. The claimant failed to complete a resident's goal summary sheet for October 2011 and when it was provided, it was incomplete which eventually resulted in a financial loss to the employer in the amount of \$2,000.00 to \$2,500.00.

4. **Completion and Submission of Monthly Quality Assurance (QA) Data.** Mental health QA data is due each month. On the following dates, Ms. Wingfield sent email requests to the claimant to forward the 2011 QA data: June 6, August 2, August 10, September 26, October 3, November 23, December 13, December 20 and December 27, 2011. As of January 5, 2012 the claimant had not submitted any QA data from May 2011 through December 2011.

5. **Failure to Complete Module 3 On-Site Training Checklists.** A request was sent to the claimant to complete a Module 3 checklist on a list of four employees by October 21, 2011. A second request was sent on October 31, 2011 and a third request was sent on November 29, 2011. The checklists have not been submitted nor has a reason for the delay.

6. Failure to Provide Timely Documentation Per Request of IME (Iowa Medicaid Enterprise). A July 2011 DHS investigation resulted in the development of a plan of correction, parts of it which involved the entire agency. Consequently, the employer sent an email to all agency supervisors on August 5, 2011 requesting that time sensitive tasks be completed in August 2011. IME requested evidence of staff training on CCSP (Community Care Services Program) implementation on October 7, 2011. Most agency supervisors responded with specific resident CCSP reviews and staff signatures or with formal review processes completed. There was no evidence that the tasks were completed at the claimant's facility. She provided a staff meeting note from September 28, 2011 but the meeting agenda contained no staff signatures or any specific information about which plans were reviewed.

7. Monthly Safety and Disaster Drills. Each facility is required to complete monthly disaster and safety drills pursuant to CARF and IAC Chapter 62. Several reminders were sent to staff with missing drills. The employer sent email reminders on October 17, October 20 and November 30, 2011 asking that the drills be forwarded to the Safety Committee Chair. The claimant either failed to complete the drills or failed to send them to the appropriate person in a timely manner.

The claimant did make progress on some of the probation issues but the employer subsequently learned there were significant problems with the manner in which the claimant was handling the residents' accounts. The employer is responsible for residents' accounts and pursuant to Iowa Code, it must provide residents with distribution of monthly allowances and documentation to substantiate the account transactions. The employer's policies require that, "staff will hold enough allowance in the resident account to cover monthly pharmacy co-payments. The facility administrator (or designee) will make payment on behalf of the resident. Receipts of payment will be maintained in the resident record."

The claimant sent a listing to Pat Van Cannon on February 7, 2012 of the outstanding bills the residents had with Lutz LTC Pharmacy. Ms. Van Cannon asked the claimant why the residents got prescriptions without making their co-pays and the claimant said they did not have enough funds, "especially if they needed to buy their cigarettes and pop." There were no further explanations offered and Ms. Van Cannon personally contacted the pharmacy. Eight of the claimant's ten residents owed balances to the pharmacy for a total past due amount of \$4,132.83. Pharmacy staff went to the claimant's facility in November 2011 to collect \$500.00 from the claimant to pay on the resident accounts. The claimant agreed to make monthly payments after that but no payments had been made as of February 7, 2012. Ms. Van Cannon notified Ms. Wingfield and Jim Fox of the pertinent information and she added that a couple of the residents had sufficient funds available to pay their respective balances in full.

Ms. Wingfield conducted a partial audit of some of the residents' files for which the claimant was responsible and none of the annual recertification paperwork had been completed. The employer suspended the claimant on February 10, 2012 and completed the audit afterwards. The employer learned that none of the annual certifications for the residents had been completed. Ms. Wingfield also discovered time-sensitive mail for a resident from Social Security sitting on the file cabinet unopened. The employer discharged the claimant on February 15, 2012 for gross negligence of her duties and failure to communicate the deficits to the employer. She was responsible for the overall oversight of the program, which included meeting all outside certifications for Iowa and CARF. If the claimant was not able to get the work done, she needed to at least advise the employer of this fact so the employer could ensure everything was done.

The claimant did not receive a bonus on January 24, 2012 and filed a grievance. She stated that the CEO heard her grievance on February 7, 2012 and he reportedly said that she had not asked for help "loud enough" and that the first order of business was to get her some help. The CEO documented in his summary letter that there were several long-standing performance issues cited which included filing and email, completion of quarterly reports, failure to complete goal summary sheets, completion and submission of monthly QA data, failure to complete the MOD 3 on-site training checklists, failure to provide timely documentation per request of IME and failure to keep current with monthly safety and disaster drills. The CEO noted that the claimant never disputed these findings.

The claimant filed a claim for unemployment insurance benefits effective March 30, 2012 and has received benefits after the separation from employment.

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.

Iowa Code § 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 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 February 15, 2012 due to her repeated failure to follow the employer's directives in order to comply with state and federal regulations. 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). Even after receiving repeated warnings, the claimant demonstrated a gross negligence with regard to her work expectations, thereby placing the residents and the employer at risk. She denied all wrongdoing in the hearing and blamed the problems on the fact that she was working without a rehabilitation coordinator/qualified mental health professional. The claimant's failure to follow directives shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated March 30, 2012, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css