

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY L SEITZ
Claimant

APPEAL NO. 13A-UI-04659-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 03/31/13
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 16, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 23, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Mary Eggenburg participated in the hearing on behalf of the employer with witnesses, Donna Muller and Pat Bott.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time in the emergency department as a staff nurse from August 11, 1997, to March 13, 2013. She was suspended pending an investigation and discharged on March 28, 2013, for violation of the employer's medication management handling policies. The claimant had been counseled and retrained on medication management procedures in March 2012 after similar conduct was discovered.

A narcotics audit showed that the claimant willfully violated the employer's policies by failing on three occasions in 2013 to properly dispose of surplus drugs. There was no documentation of the disposal verified by two witnesses in violation of a known work rule. The claimant had no explanation for the policy violation.

The claimant filed for and received a total of \$1,188.00 in unemployment insurance benefits for the weeks between March 31 and May 11, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated April 16, 2013, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/tll