IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DEBBIE NELSON
Claimant

WESTERN ARIZONA REGIONAL MEDICAL CENTER
Employer

APPEAL NO: 10A-UI-00603-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12-06-09
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 7, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 9, 2010. The claimant participated in the hearing. Beth Tankersley, Emergency Room Director; Kimberly Baird, RN; Robert Brown, Director of Human Resources; and Julie Allison, Human Resources Generalist participated in the hearing on behalf of the employer. Employer's Exhibits One through Thirty-Six and Claimant's Exhibit A were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time emergency room RN for Western Arizona Regional Medical Center from June 22, 2009 to November 25, 2009. She was discharged for a large number of medication dispensing discrepancies on the medication dispensing system (PYXSIS). Employees have to log on to the PYXSIS system with their initials and their fingerprints serve as their password. On the morning of November 14, 2009, the claimant withdrew the narcotic pain medication dilaudid for RN Kimberly Baird's patient. Ms. Baird also pulled dilaudid and gave it to her patient and when she double checked the times it was issued for charting purposes she realized the dilaudid was pulled twice that morning using the same patient's name. Ms. Baird went to the triage area and asked the claimant if she gave her patient the dilaudid because she was worried about the patient being overdosed but the claimant said she did not give it to that patient but to another and must have put the wrong name in the computer, even though the nurses are expected to take their patients' charts when they go to the PYXSIS system and the patient's room to prevent errors of that nature. Approximately one hour later the claimant went back to Ms. Baird and said she remembered she gave the dilaudid to another patient but that patient had a doctor's order for an antibiotic, not for a narcotic pain medication. There was no

documentation showing why the claimant removed the dilaudid from PYXSIS or on any of the claimant's patients' charts so the charge nurse called Emergency Room Director Beth Tankersley at home and she came in and conducted an investigation. Ms. Tankersley called the pharmacy and pulled all of the claimant's records from October 14 to November 14, 2009, the only period available. There were some discrepancies so Ms. Tankersley cross referenced the patients' names and medication accounts showing every nurse who charted in the emergency room (Employer's Exhibit's 2 through 26). Ms. Tankersley provided documentation showing the claimant had 12 incidents where there were no patient identifications listed for dilaudid, nexium, which is used to calm a patient's stomach when also given pain medication; pain medication tordol and pain medication ultram (Employer's Exhibit One). There were 19 incidents of medication, including morphine, dilaudid, zofran (also used for nausea), nexium, and tordol, being taken but not documented; 18 incidents of duplicate withdrawals of morphine, dilaudid and zofran; and eight incidents of medications, including morphine, dilaudid and zofran, being wasted in the emergency room, the last category of which the employer did not consider to be a high number (Employer's Exhibit One). Ms. Tankersley then asked the claimant to take a drug test. The drug screen was done in accordance with Iowa Code section 730.5 even though it was conducted in Arizona. The lab calls the employer if an employee tests positive for a prescription drug and then the employer asks the employee to provide proof of a prescription for an approved positive. In this case the claimant tested positive for darvocet (Employer's Exhibit 29) and provided a prescription for the same for the Appeal hearing but not to the employer at the time of this incident or before November 25, 2009 (Claimant's Exhibit A). Consequently, she was suspended pending investigation (Employer's Exhibit 30). During the investigation Ms. Tankersley randomly pulled three other emergency room RNs' rates of discrepancies for the same one month period and found one error among the three of them and that was for an IV fluid. Ms. Tankersley testified the employer never had that large of a narcotic discrepancy in the past. The company that performed the lab work tried to contact the claimant several times unsuccessfully to ask if she had a prescription for darvocet. After two weeks of not being able to reach the claimant the lab called the employee health nurse for help in locating the claimant so it could finalize the test (Employer's Exhibit 30). The employee health nurse left daily messages for the claimant beginning November 20, 2009, and then Ms. Tankersley made several attempts to reach the claimant to discuss the results of the drug discrepancy investigation but did not receive a response (Employer's Exhibit 30). The employer sent the claimant a letter dated November 25, 2009, stating her employment was terminated for multiple drug discrepancies (Employer's Exhibit 30). The employer also sent the claimant a certified letter, return receipt requested, but it was not signed for November 27, December 14 or December 24, 2009 (Employer's Exhibit 34). The claimant testified she moved from Arizona to Iowa in December 2009 but does not recall when she traveled. She stated she did not receive any phone calls from the lab or the employer and did not receive the employer's written correspondence until her mail was forwarded to her new address in Iowa as she moved before knowing the outcome of the employer's investigation which resulted in her termination from employment. The claimant further testified she did not know why there were so many drug discrepancies as documented in Employer's Exhibit One or why she did not pursue the fact she had a prescription for the darvocet that caused her to test positive on her drug screen November 14, 2009.

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for multiple drug discrepancies rather than for failing to pass the drug test given to her November 14, 2009. An incident report was completed November 14, 2009, because the claimant took dilaudid from the PYXSIS medication dispensing system but could not provide documentation of where it went. She indicated she took it out for Ms. Baird's patient but acknowledged that was not accurate when questioned by Ms. Baird and one hour later said she took it for one of her patients but that patient was only scheduled to receive an antibiotic and not any narcotics. The 57 discrepancies outlined in Employer's Exhibit One are an exorbitant number when compared to the one error committed by the three other nurses combined who were randomly checked for medication errors during the same 30-day period of time. The claimant could not account for those discrepancies and left the state without notifying the employer or participating in the investigation and was unable to explain the number of drug discrepancies she had between October 14, 2009 and November 14, 2009. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The January 7, 2010, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/css