

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTIN ERICKSEN
Claimant

APPEAL NO: 11A-UI-13505-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 09/11/11
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed an unemployment insurance decision dated October 5, 2011, reference 01, which held that Martin Ericksen (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 November 8, 2011. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted and, therefore, did not participate. The employer participated through Administrator Vicki Stout and David Williams, Employer Representative. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the party, 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 having considered all of the evidence in the record, finds that: The claimant was employed as a full-time maintenance coordinator from November 24, 2008 through September 9, 2011 in the Avoca Nursing and Rehab Center. The claimant was trained on dependent adult abuse at the time of hire; he acknowledged a copy of the resident's Bill of Rights and the employee handbook. A resident has the right to be free of financial exploitation. Iowa Code § 235B.2(5)D includes financial exploitation as adult abuse and defines it as: "The act or process of taking unfair advantage of a dependent adult or a dependent adult's physical or financial resources for one's own personal or pecuniary profit without the informed consent of the dependent adult including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretense as a result of the willful or negligent acts or omissions of the employee/caretaker." The claimant agreed to these requirements as a condition of ongoing employment.

On August 19, 2011, a co-employee reported an alleged dependent adult abuse incident to the employer. The co-employee had been in resident LB's room, who is a 94-year-old male resident. LB reported that he was going to loan money to the claimant, since the claimant did not have any money to pay for his daughter's college. As a mandatory reporter, the co-employee informed both LB and the claimant that she would be reporting this to the employer. The allegation was also presented to the Iowa Department of Inspections and Appeals (DIA), which consequently subjected the employer to an investigation, which could jeopardize the facility's license. The claimant was directed not to have any contact with LB and not to enter his room.

The employer completed its investigation on August 25, 2011 and concluded that the claimant used his influence as an employee and a friend of this resident to take advantage of the resident. The claimant and his daughter admitted to the employer that he had conversations with LB in and outside the facility regarding his daughter's financial concerns. His daughter works in another nursing facility. The claimant said that his daughter had arrived at the facility on August 19, 2011 to take LB to the bank. However, the claimant told the employer that he and his daughter were not going to accept the loan from LB. The employer issued the claimant a verbal warning on September 6, 2011 and advised him that there could be further actions resulting from the DIA inspection.

The employer subsequently learned from the DIA investigation that the claimant took LB to the bank on the afternoon of August 19, 2011 where LB withdrew \$900.00 and gave it to the claimant. The claimant did not disclose this fact to the employer in his written statement dated August 23, 2011. He was directed not to have any contact with the resident; he violated that directive and impeded the employer's investigation into a dependent adult abuse claim. The employer discharged him on September 9, 2011.

The claimant filed a claim for unemployment insurance benefits effective September 11, 2011 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 claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on September 9, 2011 for disobeying a direct order to have no further contact with a resident and for providing false information to the employer about a dependent adult abuse allegation. Furthermore, he used his position to financially exploit a 94-year-old resident. The claimant's conduct 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 October 5, 2011, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he 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/kjw