

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE N NOBLE
Claimant

APPEAL NO. 10A-UI-12730-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIDGECREST VILLAGE
Employer

OC: 08/15/10
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Ridgecrest Village, filed an appeal from a decision dated September 10, 2010, reference 01. The decision allowed benefits to the claimant, Stephanie Noble. After due notice was issued a hearing was held by telephone conference call on October 28, 2010. The claimant participated on her own behalf. The employer participated by Human Resources Director Gina Houzenga and Health Service Administrator Cris Vetter. Exhibits One and Two were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Stephanie Noble was employed by Ridgecrest Village from July 21, 2010 until August 19, 2010 as a full-time CNA. On August 15, 2010, it was discovered by the payroll personnel there might have been hours claimed by Ms. Noble she did not actually work. There were 25 incidents between May 17 and August 13, 2010, where her time card showed she had worked double shifts. Any double shifts or extra hours have to be approved by a supervisor and initialed on the proper documentation. The time cards showed she would punch in at the beginning of the night shift and not punch out until the end of the first shift.

Health Services Administrator Cris Vetter and Human Resources Director Gina Houzenga met with the claimant on August 18, 2010, to discuss the matter. At first Ms. Noble maintained she had merely forgotten to punch out at the end of the night shift but could not explain the punch out time at the end of the first shift. She then cried and admitted she had not forgotten to clock out but had made it appear she had worked a double shift by coming in at the end of the first shift and clocking out. She agreed to repay the wages she had not earned and was discharged.

Stephanie Noble has received unemployment benefits since filing a claim with an effective date of August 15, 2010.

REASONING AND CONCLUSIONS OF LAW:

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 claimant was discharged for falsification of her time records and accepting wages she had not earned. At the hearing Ms. Noble maintained, for the first time, that she had in fact been authorized to work those extra shifts but could not explain why she had not told the employer that earlier or why no authorization appeared on the documentation for each of the 25 days she claimed wages for double shifts.

The administrative law judge does not find the claimant credible because she has changed her story and admitted the wrongdoing in writing and by agreeing to pay back the unearned wages. While mistakes might be made in documentation from time to time, 25 incidents in three months is so excessive as to be unbelievable. She also did not provide evidence from any co-workers whose day shift hours she claimed to have worked in that time period.

The record established the claimant was discharged for falsification of time records and claiming wages she had not earned. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of September 10, 2010, reference 01, is reversed. Stephanie Noble is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeyer
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs