

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**PAMELA A SMELSER**  
Claimant

**APPEAL 16A-UI-05750-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HUMBOLDT COUNTY MEMORIAL  
HOSPITAL**  
Employer

**OC: 04/17/16  
Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-Finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the May 11, 2016 (reference 01) unemployment insurance decision that allowed benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on June 8, 2016. The claimant participated personally. The employer participated through Emily Westphal. Mary Moritz also testified for the employer. Employer's Exhibit One was admitted into evidence. The administrative law judge took official notice of the administrative record, including fact-finding documents. 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.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits and, if so, can the repayment of those benefits to the Agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a registered nurse and was separated from employment on April 13, 2016, when she was discharged.

The claimant began employment in 2008 and last received a patient complaint in 2012. In late-2015/early-2016, the employer implemented new policies and procedures emphasizing patient control and satisfaction, including the values of compassion and empathy. The claimant was required to wear on her badge, a card with proclaiming the values, and expected to recite the values when requested by the employer, and formally acknowledged receipt of the new policies in March 2016. The employer reported the claimant was discharged after three patient complaints which violated the employer's values regarding respect, patient compassion, and empathy. The first incident occurred in January 2016, in which the claimant used a bedpan for

a patient at night due to short staffing and left a note on the bedpan referencing being understaffed, resulting in a patient complaint. As a result, the claimant was issued a written warning.

The second incident occurred when the claimant reportedly made a patient get up around 3:30 a.m. or 5:00 a.m. and placed in her chair, stating the employer was short staffed and the patient had to get up at that time. The patient's family member also reportedly videoed the claimant's interactions with the patient and furnished it to the employer, in which it was determined she was being abrupt. The claimant was suspended for several days, had to go to EAP sessions at the employer's request, and continued to have one-on-one sessions with her manager, Ms. Westphal, to work on her communication skills and patient perception.

The final incident was a third patient complaint based on the claimant's conduct on April 11, 2016. It was reported that the patient was crying, reporting her concerns about the way the claimant made her feel, and that she had scolded her and her family who were visiting. The claimant reported that the patient was experiencing shortness of breath and that in the presence of family, the claimant tried to explain that not talking may help preserve her breath. The claimant denied using a mean or scolding tone when communicating. The claimant later that day was helping the patient in the restroom when she noticed the patient had sweated through her gown. In an attempt to make the patient feel at ease, the claimant offered to get a new gown, help the patient wash her sweaty back, and rub lotion on her back to soothe her. The claimant reported the patient seemed appreciative and did not display any discomfort or uncomfortableness with the claimant as they interacted. However, based on the three complaints received, the claimant was subsequently discharged.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,393.00, since filing a claim with an effective date of May 11, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview by way of Mary Moritz.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory, and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias, and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The employer may have had good business reasons to discharge the claimant, based on complaints of its patients. However, the evidence presented does not support that the claimant violated the employer's values of compassion and empathy in her interaction with the patient who complained on April 11, 2016. When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

In this case, the undisputed evidence is that the claimant worked for years without patient complaints and it was not until January 2016 (which coincided with the employer's implementation of new policies and procedures emphasizing patient happiness and control) that the claimant received and was disciplined for complaints regarding patients' perception of her. The claimant knew her job was in jeopardy based on the January written warning and subsequent suspension. However, the administrative law judge is not persuaded that the claimant engaged with the patient on April 11, 2016 in any way that would violate the employer's

values and policies. The claimant testified she did suggest to the patient who was experiencing a shortness of breath, that not talking could help but denied scolding the patient or her family. As a medical professional and given the seriousness of the medical issue at hand, the administrative law judge is persuaded that was a reasonable recommendation to make under the circumstances. The claimant further stated she was intentionally compassionate of the patient inasmuch as she noticed the patient was sweaty and tried to make her comfortable by offering a fresh gown, bath, and lotion for her. Had the patient felt uncomfortable, it is unclear why she would have permitted the claimant to tend to her, beyond medical necessity, and in light the claimant's obvious attempts to make her feel comfortable.

Cognizant of the importance of empathetic and compassionate care of patients, the hearsay statements offered by the employer in this case do not overcome the credible and direct testimony offered by the claimant at the hearing. Therefore, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

Because the claimant is eligible for benefits, she has not been overpaid benefits. As a result, the issues of recovery of any overpayment and possible relief from charges are moot.

**DECISION:**

The May 11, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The claimant has not been overpaid benefits and the employer's account is not relieved of charges.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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