

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN D SMITH
Claimant

APPEAL NO. 13A-UI-13228-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEALTH CARE MANOR
Employer

**OC: 11/03/13
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

The employer, Health Care Manor, filed an appeal from a decision dated November 26, 2013, reference 01. The decision allowed benefits to the claimant, Dawn Smith. After due notice was issued, a hearing was held by telephone conference call on December 19, 2013. The claimant participated on her own behalf. The employer participated by Administrator Mary Ayers and Nurse Consultant Will Gibson.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

Dawn Smith was employed by Health Care Manor from September 29, 2009 until November 4, 2013 as a full-time director of nursing (DON). Ms. Smith had received several disciplinary actions during the course of her employment. On October 22, 2013, she was being given a final written warning by Administrator Mary Ayers and Nurse Consultant Will Gibson.

During that meeting Ms. Smith announced she was actively seeking another job. The employer accepted that and informed her it would therefore be actively seeking a replacement DON. Ms. Ayers notified the claimant some days later an ad was being run in the local newspaper for her position. The same day a note was posted in the break room informing the staff Ms. Smith would be leaving and a new DON was being sought. The employer did this so the other staff would not wonder and speculate inappropriately if anyone saw the ad in the newspaper.

During the period Friday, November 1 through Monday, November 4, 2013, several staff members contacted Ms. Ayers by phone and in person to report comments being made by Ms. Smith which were alarming the staff. The clamant had been saying things which caused

others to believe she was being “forced out” and that management could not be trusted, and that the ad had been placed without her knowledge.

These comments were resulting in disruption to the work flow, mistrust and tension among the staff as well as undermining the operation of the facility. Ms. Ayers discharged the claimant November 4, 2013, due to her unprofessional conduct.

Dawn Smith has received unemployment benefits since filing a claim with an effective date of November 3, 2013. The employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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 final written warning given to the claimant was clear that her job was in jeopardy as a result of her work performance problems and lack of proper management. This is what prompted her to state her intention to look for work elsewhere, and she also knew the employer would be posting her job.

Ms. Smith acknowledged being upset because the employer did not inform her a note was going to be posted in the break room informing the staff of her intention to leave. But she did know an ad was going to be placed in the local newspaper that same day. She seemed to feel she should have been consulted about the posting of the note, but did not explain why it would

make any difference if the other staff found out about her leaving from the note or the newspaper advertisement.

While she may have been put out that did not excuse her conduct in disrupting the other staff by making negative comments about management, creating distrust and impugning the management's integrity.

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.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The unemployment insurance decision dated November 26, 2013, reference 01, is reversed. Dawn Smith is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The claimant is overpaid unemployment benefits in the amount of \$878.00. This must be recovered in accordance with the provisions of Iowa law.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css