

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORI MOORE**  
Claimant

**APPEAL NO: 12A-UI-13558-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JENNIE EDMUNDSON**  
**MEMORIAL HOSPITAL**  
Employer

**OC: 09-30-12**  
**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 November 8, 2012, 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 December 13, 2012 and continued February 22, 2013. The claimant participated in the hearing. Donna Wellwood, Human Resources Director, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five 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 a full-time advanced respiratory care practitioner (RT) for Jennie Edmundson Memorial Hospital from March 29, 1999 to October 3, 2012. She was discharged for failing to conduct bedside, electronic charting and disorganization.

The employer has been using real time charting on laptops for approximately ten years, updating its system in 2012, rather than having employees go back to the nurses' station to chart, sometimes hours after the care is performed. The RTs go to patient rooms, administer treatments based on doctors' orders and do bedside charting after they have completed the therapy on the patient. Rather than use the real time/laptop charting, the claimant would take handwritten notes and move on to other patients, perform the duties that needed to be completed for that patient, take handwritten notes and move on to the next patient, repeating the procedure. If she had time, but usually at the end of the day, the claimant would try to reconstruct the patient charting, which caused errors as she sometimes could not remember everything she did for a patient when not performing real time charting.

On March 5, 2012, the claimant received a documented discussion as her supervisor was doing routine chart audits on all RTs and discovered errors made by the claimant because she was taking handwritten notes rather than using the real time computer charting as required. Her supervisor believed she had difficulty “staying on task” and consequently was staying past the end of her shift, even though she clocked out when her shift ended. The employer insisted the claimant stop taking notes and begin doing real time charting on the computer as an expectation of her continuing employment.

On April 2, 2012, the claimant received a written warning because she stayed past the end of her scheduled shift to “tie up loose ends and read emails” (Employer’s Exhibit One). She was also doing her charting at that time because she was unable to complete it during her shift as she was not doing real time charting. The claimant was receiving overtime until the employer informed her she was not allowed to work overtime to do her charting at which time the claimant began clocking out and staying to do her charting. When the employer learned of that situation it had to go back and pay her for the time she worked off the clock, which was approximately 40 hours. She was warned April 2, 2012, for failing to follow policy and procedure with regard to “getting her work done in a timely manner” (Employer’s Exhibit One).

On April 17, 2012, the claimant received a written warning for failure to adhere to the employer’s core values after she was heard saying to an overweight patient she was pushing in a wheelchair, “You are really heavy to push” (Employer’s Exhibit Two). The witness who reported the situation also stated the claimant said, “Can’t you do something about this?” (Employer’s Exhibit Two). The claimant admitted making the first statement but adamantly denied making the second statement. She did not mean to hurt his feelings but was frustrated because he was late and then had to use the restroom and she was having difficulty with his wheelchair. She regretted making the comment to the patient and the employer agreed it was not in the claimant’s nature to make a comment of that sort to a patient.

On June 19, 2012, the claimant received a written warning and four-day suspension for her “inability to stay on task and to do real time charting” (Employer’s Exhibit Three). The warning stated, “(The claimant’s) inability to complete her scheduled tasks on time continues to exist. (The claimant’s) inability to do her job is unsafe for our patients, unfair to her co-workers and is against our Standards of Compassionate Service” (Employer’s Exhibit Three). The claimant was not getting to her orders and as a result she was not completing her tasks in a timely manner which sometimes caused her to run into other RTs coming to give other treatments. The claimant was performing her work but was “very disorganized” and slow and took time to do other tasks instead of getting her doctors’ orders done on time (Employer’s Exhibit Three).

On October 2, 2012, a patient’s wife complained that while her husband was combative after surgery, which was not his normal state, the claimant came in to get his oxygen level but left after observing him and stating, “I am not going to stand here and get beat up,” without realizing the patient’s wife was in the room sitting on the sofa (Employer’s Exhibit Four). She returned a few minutes later and took the patient’s oxygen level. The claimant received a written warning and suspension for “failure to adhere to core values” (Employer’s Exhibit Four).

The employer believed that because of the claimant’s disorganization she could not complete other tasks such as cleaning equipment, helping co-workers or finishing her own work without the assistance of co-workers.

After reviewing the above-stated situations, the employer terminated the claimant’s employment October 3, 2012, because, “Since 6/19/12 (the claimant) has been unable to meet and sustain the job expectations pertaining to patient care and charting. (The claimant) continues to

struggle with disorganization which affects patient care and her disorganization also impacts her co-workers” (Employer’s Exhibit Five). The employer determined that while the claimant did show some improvement after the June 19, 2012, warning, by mid-September 2012 she again had trouble keeping up with her charting, treatments and was not completing her orders on time.

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’s performance problems came to light when the employer started auditing all charts and a physician made complaints about the claimant at the end of 2011/beginning of 2012. Because the claimant was not keeping up with therapies one of the doctors forbid the claimant from giving therapies to his patients.

While the claimant was a well-intentioned health care professional, she failed to adapt to the employer’s technology, which was upgraded in 2012, and received four warnings and a

suspension, most due to her refusal to use the real time charting feature, prior to her termination. Even though she was repeatedly warned, the claimant persisted in taking handwritten notes rather than using the real time charting system the hospital uses and requires even though she had been trained on the new system. As a result, the claimant was disorganized and behind, could not keep up with doctors' orders and often failed to finish a treatment before another RT showed up for the patient's next scheduled treatment.

There is no evidence that the claimant did not care about her patients. The problems occurred because of her insistence on keeping handwritten notes and getting behind rather than using the real time charting procedure. 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). Therefore, benefits must be 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 November 8, 2012, 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.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/pjs