

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PENNI HEINZE**  
Claimant

**APPEAL NO: 10A-UI-09343-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 05-23-10**  
**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 June 23, 2010, 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 August 17, 2010. The claimant participated in the hearing. Amanda Bradac, DON; Mike Terrill, Administrator; and Lynn Corbeil, Employer Attorney; participated in the hearing on behalf of the employer. Employer's Exhibits One through Ten 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 RN charge nurse for Care Initiatives from December 11, 2003 to May 25, 2010. She worked the 2:00 p.m. to 10:30 p.m. shift. The claimant was discharged for accumulating 13.2 hours of unauthorized overtime during the May 6 to May 19, 2010, pay period after being warned. On May 8, 2010, she worked .75 minutes of unauthorized overtime; on May 9, 2010, she worked 2.00 hours of unauthorized overtime; on May 11, 2010, she worked 1.25 hours of unauthorized overtime; on May 12, 2010, she worked 1.50 hours of unauthorized overtime; on May 14, 2010, she worked 1.25 hours of unauthorized overtime; on May 18, 2010, she worked 3.00 hours of unauthorized overtime; and on May 19, 2010, she worked 3.75 hours of unauthorized overtime. On March 15, 2010, the employer held a five minute in-service meeting regarding the overtime policy. The claimant chose not to sign the form indicating attendance because she did not want to be held responsible for the information presented. On March 18, 2010, the claimant received a coaching regarding unauthorized overtime and failing to punch out for her lunch break. That evening she requested prior approval for overtime, using the proper paperwork, because she wanted to work overtime to chart but her request was denied because it was not made for something out of the ordinary such as an admission close to the end of her shift, a death, a fall or another employee calling in

to say they would not be at work. The claimant worked three hours of unauthorized overtime anyway and the employer issued her a final written warning March 19, 2010.

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 chose to work overtime without authorization on seven occasions in 11 days between May 8 and May 19, 2010, after receiving a final written warning March 19, 2010. She was aware of the proper procedure for requesting overtime, as she had done so in the past, but instead chose to substitute her judgment for that of the employer and work overtime when she deemed it necessary without securing prior approval from the employer. She received a coaching March 18, 2010, about working unauthorized overtime and then had the audacity to work unauthorized overtime that evening after her request for overtime to do charting was turned down. 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). Benefits are 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 June 23, 2010, 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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