

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA M AMOS**  
Claimant

**APPEAL NO: 11A-UI-04924-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 03/13/11**

**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Care Initiatives (employer) appealed a representative's April 6, 2011 decision (reference 01) that concluded Melissa M. Amos (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on May 10, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from three witnesses, Cathy Marker, Chris Ann Vanderpool, and Kim Dhabolt. One other witness, Tricia Heberer, was available on behalf of the employer but did not testify. During the hearing, Employer's Exhibits One, Three through Eight, Eleven, and Twelve were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 9, 2008. She worked full time as a licensed practical nurse (LPN)/charge nurse at the employer's Chariton, Iowa facility. Her last day of work was March 16, 2011. The employer discharged her on that date. The stated reason for the discharge was falsification of records.

On March 7 the claimant worked a day shift from 6:00 a.m. to 2:00 p.m. During the shift, on a particular resident's medication administration record (MAR) she recorded that she had tested and gotten a blood sugar levels of 186, and that as a result she had administered five units of insulin. However, she had neither checked that resident's blood sugar nor administered insulin as she recorded.

When the evening shift nurse came on duty that evening, the resident reported to her that neither had her blood been checked nor had she been given any insulin. That nurse then reported the issue to Ms. Dhabolt, the assistant director of nursing, on March 8. Ms. Dhabolt checked the glucometer on the cart the claimant had used, and found no readings matching the reading recorded by the claimant for the resident. Ms. Marker, the director of nursing, became involved in the investigation and spoke to the claimant on March 11, informing her of the allegation and seeking an explanation. The claimant insisted that she had taken the reading and administered the insulin as recorded on the MAR, and indicated that she must have used another glucometer. However, there was no other glucometer on the cart. Nonetheless, Ms. Marker proceeded to check the other glucometers from other cars, but found no readings correlating to that recorded by the claimant on the resident's MAR.

The employer's policies, of which the claimant was on notice, indicate that falsification of a record is a dischargeable offense even for a single occurrence. As a result of the conclusion that the claimant had falsified the resident's MAR as to the checking of the blood sugar level and the administration of insulin, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective March 13, 2011. The claimant has received unemployment insurance benefits after the separation.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's falsification of a resident's medication administration record, as well as her failure to be forthcoming in the investigation, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. White v. Employment Appeal Board, 448 N.W.2d 691 (Iowa 1989). The employer discharged the claimant for reasons amounting to work-connected misconduct.

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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's April 6, 2011 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 16, 2011. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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