

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARNETT K BARFORD
Claimant

APPEAL NO. 13A-UI-12034-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

OC: 09/29/13
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, Broadlawns, filed an appeal from a decision dated October 17, 2013, reference 01. The decision allowed benefits to the claimant, Barnett Barford. After due notice was issued a hearing was held by telephone conference call on November 19, 2013. The claimant participated on his own behalf. The employer participated by Vice President of Human Resources Judy Kilgore and Manger of Residential Services Denise Peterson.

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:

Barnett Barford was employed by Broadlawns from August 20, 2012 until September 27, 2013 as a full-time residential treatment worker. Part of his job duties is the administering of narcotics to the residents. The narcotics are counted at the beginning and ending of each shift by the oncoming workers and the workers just leaving. The amount of narcotics on hand at the end of each shift must reconcile with the amount on hand at the beginning, minus the amount of medications administered during the shift.

Mr. Barford received written warnings on July 29 and 31, 2013, for not giving medications to the residents, although he signed off on the medication administration record (MAR) that he had done so. He was issued the disciplinary actions, given additional training and demonstrated he knew how to administer the medications and document it. When medications are to be given the worker must sign them out on a form provided by the pharmacy. The fact the medication is given is then recorded on the MAR.

On September 27, 2013, Manager of Residential Services Denise Peterson was doing the weekly audit of the narcotics count. This is different from the count done at the beginning and ending of each shift. She discovered narcotics had been noted on the MAR by Mr. Barford as having been administered on September 20 and 21, 2013, but there was nothing noted on the pharmacy sheet that these medications had been signed out by him.

Further review of the record showed no other discrepancies in the counts done at the end of the shifts. This was due to the fact the medications were not signed out and not actually administered, so the same number of narcotics would be accounted for at the beginning and ending of the shift.

Mr. Barford was questioned by Ms. Peterson and Chief of Behavioral Health Dr. Janice Landy. The discrepancies in the records for the dates in question were discussed with him, the fact he wrote on the MAR he had given the narcotics but there was no record of him having signed out those medications on the pharmacy sheet. He insisted he had done everything properly and someone else must have failed to sign out the medications.

After further review it was determined he had once again failed in the proper documentation and administration of medications to the residents and the employer discharged him.

Mr. Barford filed a claim for unemployment benefits with an effective date of September 29, 2013. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing. 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 claimant was discharged for failing to properly administer and record the distribution of narcotics to residents under his care. He denied making any errors but could not provide any convincing explanation to account for the fact he did not sign out the medications on September 20 and 21, 2013, yet documented he had given those medications to the residents.

The employer must keep track of narcotics used and given to patients and the claimant's failure to follow these requirements put the employer at risk for adverse legal consequences as well as possibly civil liabilities on behalf of the patients. 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 § 96.3-7-a, -b.

DECISION:

The representative's decision of October 17, 2013, reference 01, is reversed. Barnett Barford is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. He is currently not overpaid.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs