

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY L NOBLE**  
Claimant

**APPEAL NO. 10A-UI-02880-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 01/17/10**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 10, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 7, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Laurie Marshall. Bekki Hohenthanner participated in the hearing on behalf of the employer with a witness, Jennifer Jennings. Exhibit One was admitted into evidence at the hearing. Exhibit A, which the claimant had submitted before the hearing but was copied to the employer, was sent to the employer for objections after the hearing. The employer objected on the grounds of relevance, but Exhibit A is admitted into evidence.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer as a certified nursing assistant from August 7, 2006, to January 19, 2010. She was informed and understood that under the employer's work rules, the use of a controlled substance, except as prescribed by a physician, while on the job or on facility property was prohibited. Medication taken under the direction of a physician was permitted if it did not affect the employee's ability to safely perform her job.

The claimant had received treatment for anxiety and depression starting in mid-2009, including prescription medication for anxiety and depression.

The claimant was scheduled to work on the afternoon of January 19, 2010. Prior to reporting to work, the claimant was emotionally distressed due to problems she was having with her nephew, who was living her residence. She was crying and had difficulty controlling her emotions. She had a friend call the facility to let them know that she was unable to work. The assistant director

of nursing told the friend that the claimant would need to locate a replacement and provided her with some phone numbers of potential replacements.

The claimant had taken some prescribed medication to address her anxiety symptoms and decided to come in to work. On her way to work, she called her doctor's office. She was advised by staff in the physician's office that she should come in to the office as this was not anything that could be handled over the phone.

After the claimant arrived at work, she continued be emotionally overwrought and was crying uncontrollably. She was told that she needed to compose herself and would not be allowed to care for residents if she could not compose herself.

The claimant went back to the break room to compose herself. She decided that she would take a Xanax pill that a friend had given her. This was not a prescribed medication for the claimant. A short time later, she reported to the nurse's station and told the assistant director of nursing that she felt better and she had taken some anxiety medication, including the Xanax. When the assistant director asked about the medication, she told her the first medication she took was prescribed to her, but she got the Xanax from a friend.

The employer determined that the claimant was impaired as a result of the medications she had taken and could not safely perform her work. She was sent home for the day.

The employer discharged the claimant on January 21, 2010, for using a controlled substance without a prescription while on the job, which caused her to be unable to perform her job safely.

The claimant filed for and received a total of \$2,600.00 in unemployment insurance benefits for the weeks between January 17 and April 17, 2010.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I do not believe the claimant's testimony that she got the Xanax while she at the emergency room from a doctor there.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated February 10, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/css