IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BETTY A VAN HORN
PO BOX 642
CRESTON IA 50801-0642

SOUTHERN IOWA RESOURCES FOR FAMILIES INC
PO BOX 106
CRESTON IA 50801

Appeal Number: 06A-UI-04097-LT
OC: 03-19-06 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Iowa Code section 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

Employer filed a timely appeal from the April 7, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 1, 2006. Claimant participated. Employer participated through Rae Ann Tucker, Jackie Loomis, and Sharon McNeil. Employer's Exhibit 1 was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time home and community based services coordinator and house manager from August 18, 1991 through March 21, 2006 when she was discharged. Claimant failed to record medication administration or lack of medication administration to a resident or, as supervisor ensure that it was done by subordinates, on March 13, 15, and 17, 2006.

(Employer's Exhibit 1, A5) The copy of the medication report in issue was not made until sometime on March 18, at least one day after the failure to record medication administration. She disciplined subordinates in front of consumers on March 17, 2006. (Employer's Exhibit 1, A14a and b) and failed to complete case file information after a specific request was made on March 6, 2006. (Employer's Exhibit 1, A15b and c)

Employer placed her on a 30-day probation on February 21, 2006 for reasons including medication errors and inappropriate treatment of staff and consumers after having been counseled previously. (Employer's Exhibit 1, C1, 2, 5, 6 – 9, D4) She had been counseled in writing numerous times to make sure all case plan information was in consumers' files. (Employer's Exhibit 1, D3)

The claimant has received unemployment benefits since filing a claim with an effective date of March 19, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Claimant's continued failure to either document medication herself or ensure her subordinates did so, her mistreatment of subordinates in front of consumers, and failure to complete case files after having been repeatedly counseled and placed on probation constitutes deliberate disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

> 7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.
>
> If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The April 7, 2006, 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 is overpaid benefits in the amount of $1,944.00.

dml/pjs