

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER COSGROVE
Claimant

APPEAL NO: 11A-UI-12056-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 08/14/11
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Care Initiatives (employer) appealed an unemployment insurance decision dated September 7, 2011, reference 01, which held that Jennifer Cosgrove (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 7, 2011. The claimant participated in the hearing. The employer participated through Deb Schillinger, team director, and David Williams, employer representative. Employer's Exhibits One through Four and Claimant's Exhibit A were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time registered nurse case manager from May 10, 2010 through August 11, 2011, when she was discharged for twice providing false information to the employer. She received a written warning on June 18, 2010 for claiming hours on her time sheet which she did not work. The team director had arrived at the claimant's facility at 3:25 p.m. on June 14, 2010 because she was going to evaluate the progress of chart evaluation. The claimant could not be found, so the office coordinator called the claimant at 3:45 p.m. and the claimant reported she had just left the building. The team director left and drove by the claimant's house and her vehicle was parked in front of her house, which led the team director to believe the claimant had been there the whole time. The claimant subsequently called in at 4:07 p.m. to report that she was returning to the building. Her time sheet turned in on June 16, 2011 did not reflect the appropriate check-out time.

The claimant originally lived in South Dakota and since the employer sits on the edge of Iowa, it can employ nurses licensed from the neighboring states. The claimant moved to Iowa in April 2011 and had 30 days in which to transfer her nursing license to Iowa but failed to take action. The employer sent her a text message on June 22, 2011 to ask her if her license had been transferred and the claimant responded within one minute to report that she would "email them today."

No updated license information had been provided by July 21, 2011 and the claimant was asked whether this had been taken care of and she responded that the paperwork had been submitted to the state board by mail. The team leader learned on July 27, 2011 that the company would pay an employee two thirds of the cost of state licensure and she told the claimant about it on July 28, 2011.

On August 11, 2011, the claimant provided an expense report requesting the license fee reimbursement. She provided a carbon copy of a check dated July 23, 2011 and written to the Iowa Board of Nursing for the amount of \$225.00. The claimant also provided a receipt dated August 5, 2011 from the State of Iowa Board of Nursing, which confirmed the claimant paid \$225.00 on July 29, 2011 for reactivation of her nursing license. The claimant had previously had an Iowa nursing license, so he only had to reactivate her license as opposed to transferring it. And finally, the claimant showed a copy of her bank transaction history, which showed the check of \$225.00 was taken from her bank account on August 5, 2011.

The employer discharged the claimant effective August 11, 2011 due to the claimant providing false information, since the employer could no longer trust the claimant.

The claimant filed a claim for unemployment insurance benefits effective August 14, 2011 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on August 11, 2011 for providing false information to the employer even after she had been previously warned about it. A condition of employment was a valid nursing license, and it was the claimant's responsibility to update her nursing license when she moved to Iowa. It should have been done in May 2011 but she only took care of it after the employer asked her about it the second time but provided false information claiming that it had already been done when the facts clearly show that it had not been done on July 21, 2011.

The claimant's conduct 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated September 7, 2011, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw