

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GRETCHEN N BROOKS
Claimant

APPEAL NO. 11A-UI-10124-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEXINGTON SQUARE LLC
Employer

**OC:07/03/11
Claimant: Respondent (2R)**

Section 96.5-2-A – Discharge for Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated July 25, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 24, 2011. Employer participated by Kathy Donahue, Human Resources Coordinator. The claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Kathy Donahue.

ISSUES:

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a nursing and rehabilitation home located in Keokuk, Iowa. The claimant was hired on June 1, 2009, as a full-time registered nurse. Her last day of work was May 4, 2011. She was terminated on May 4, 2011.

The incident that led to the claimant's termination occurred on May 2, 2011. The claimant was the charge nurse and was responsible for locking the medication cart, which is where narcotic drugs were kept. The claimant had in her possession the keys that were needed to lock and unlock the medication cart. She lost the keys sometime during her shift and left work without leaving a plan on how the staff would access the medication. Staff members had to call the administrator, who in turn had to make arrangements to get another set of keys to the facility.

The claimant had previously been suspended on April 1, 2011, after she admitted stealing drugs. She was given counseling and paid back the cost of the drugs she had taken. On

April 19, 2011, she was disciplined for excessive absenteeism and tardiness. She was informed at that time that her job was in jeopardy.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer can reasonably expect that an employee will carry out assigned duties and follow work policies and procedures. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant was terminated for a serious violation of the employer's policy concerning medications. The claimant was the charge nurse and was responsible for safeguarding medication. The medication cart was locked and the claimant had the keys to access the narcotic medications. These are medications that were prescribed for patients and it was essential that these medications be given to the patients to treat their various medical conditions. The claimant not only lost the keys, but she failed to have a plan in place on how other staff members would get the necessary medications after she left for the day. This was a wanton disregard of her duties to the employer and the patients under her care. The claimant had been given two warnings in April 2011 for stealing medication and excessive absenteeism and tardiness. She knew her job was in jeopardy. The claimant's actions on

May 2, 2011, are more than a simple act of negligence. She was not only careless in losing the key but in failing to have a plan in place before she left on how the medication could be accessed. The employer has established misconduct. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the Claims Section for determination.

DECISION:

The decision of the representative dated July 25, 2011, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css