

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTY HANSEN

Claimant

APPEAL NO: 17A-UI-02417-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP

Employer

OC: 02/05/17

Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 24, 2017, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 28, 2017. The claimant participated in the hearing. Austin Smith, Employee Safety Manager and Lindsay Schuman, Human Resources Business Partner, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time RN for Central Iowa Hospital Corporation from November 4, 2015 to January 6, 2017. She was discharged for providing false information on a medical questionnaire at the time of hire.

On November 20, 2016, the claimant injured her neck at work and completed a release of medical information form. As the employer gathered medical information for her work-related injury it discovered she had not disclosed pertinent medical history on her medical questionnaire at the time of hire. The questionnaire specifically asked if the claimant had ever had restrictions placed upon her activities for any reason and the claimant answered “no.” Her medical records showed she was placed on restrictions of no lifting greater than 25 pounds 27 days before completing the employer’s medical questionnaire at the time of hire. The questionnaire also asked if the claimant had restrictions currently to which the claimant also answered “no.” However, her medical records never showed a release from the 25 pound lifting restriction and when the employer contacted the claimant’s physician, the nurse indicated her belief that the restrictions were still in place. The final question that gave rise to the employer’s belief the claimant was not truthful on the questionnaire asked, “Have you ever had physical therapy, pain management, chiropractic, or cortisone for any injury or condition?” The claimant responded she had not, but her medical records showed she had an epidural from a pain management center 27 days prior to completing the medical questionnaire. Two lines above the signature

line on the medical questionnaire states, "I understand that my affiliation with Unity Point Health could be terminated immediately if I have falsified these records." The claimant signed the form.

When the employer compared the claimant's medical records and the medical questionnaire it determined the claimant was not honest on the questionnaire. The employer does have discretion in making the decision to terminate for falsification of records. It looks at how recent and how relevant the falsified information is to the present situation that prompted the request for release of the claimant's medical records. In this case the medical records were relevant because of the claimant's work-related injury and while she had not completed the form recently, at the time she did fill out the medical questionnaire she was only 27 days removed from the treatment she failed to disclose on the form. After reviewing the paperwork and the situation the employer terminated the claimant's employment January 6, 2017.

The claimant has claimed and received unemployment insurance benefits in the amount of \$2,870.00 for the seven weeks ending March 25, 2017.

The employer did not participate in the fact-finding interview. The fact-finder called Human Resources Business Partner Heather Steuhm at 515-241-8027 on February 23, 2017, at 1:16 p.m., but did not receive an answer. Consequently, the fact-finder left a detailed voice mail message with appeal instructions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(6) provides:

Discharge for misconduct.

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant maintains she was not dishonest when answering the questions on the medical questionnaire regarding previous or current restrictions or whether she had ever been seen by a physical therapist, pain management specialist, chiropractor or received a cortisone injection, her testimony was not persuasive. The claimant had been placed on a 25 pound lifting instruction 27 days before she completed the medical questionnaire and may have still been restricted to lifting 25 pounds at the time of her work-related injury. Additionally, the claimant was seeing a pain management specialist who recommended her epidural injection 27 days prior to her filling out the medical questionnaire.

These events occurred shortly before the claimant completed the medical questionnaire and they claimant could hardly claim she forgot about these situations. The claimant consented to participate in the questionnaire as part of the job application process with this employer and by doing so she had a duty to answer the questions truthfully. When the claimant later sustained a work-related injury, the employer sought data from that form for a variety of reasons but the medical questionnaire was relevant and material once the claimant suffered a work-related injury.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2,

means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

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 section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer did not participate in the fact-finding interview. Consequently, the claimant's overpayment of benefits to date, in the amount of \$2,870.00 for the seven weeks ending March 25, 2017, is waived as to the claimant and shall be charged to the employer's account.

DECISION:

The February 24, 2017, reference 02, 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 has received benefits but was not eligible for those benefits. The employer did not participate in the fact-finding interview within the meaning of the law. Therefore, the claimant's overpayment of benefits to date, in the amount of \$2,870.00 for the seven weeks ending March 25, 2017, is waived as to the claimant and shall be charged to the employer's account.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs