

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE A LOGAN
Claimant

APPEAL NO. 09A-UI-11353-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 06/28/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Mercy Hospital, filed an appeal from a decision dated July 28, 2009, reference 01. The decision allowed benefits to the claimant, Michelle Logan. After due notice was issued a hearing was held by telephone conference call on August 31, 2009. The claimant participated on her own behalf. The employer participated by Human Resources Business Partner Jenni Grandgeorge and Director of Emergency Department Jeri Babb

ISSUE:

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

FINDINGS OF FACT:

Michelle Logan was employed by Mercy Hospital from February 4, 2002 until June 25, 2009 as a full-time registered nurse. Ms. Logan received a written warning on October 28, 2008, for falsification of time cards. On November 11, 2008, she received a warning and one-day suspension for absenteeism. That disciplinary action was later revoked after investigation revealed she had been on FMLA during the relevant time. The employer's policy reserves the right to skip disciplinary steps if the current violation is serious enough.

On June 20, 2009, Ms. Logan and other nurses and emergency medical personnel were on duty at the Iowa Speedway. A co-worker felt ill that day and Ms. Logan decided to administer an IV and an anti-nausea drug without having the co-worker signed in as a patient or documenting the treatment. This meant the treatment was outside the protocols of the hospital and any adverse consequences of the claimant's actions could have exposed the hospital to legal liabilities. Any IV or medication is to be given only with the authorization of a physician, and there was a physician on duty at the Iowa Speedway that day. The physician was not consulted.

The employer became aware of the situation when one of the other emergency personnel reported to his supervisor the claimant had requested the anti-nausea drug from him out of the ambulance supplies. The supervisor notified Director of Emergency Services Jeri Babb who investigated further. Ms. Logan was interviewed and admitted she had administered the

medical and the IV without a doctor's orders and without documenting the co-worker as a patient.

Even though the one-day suspension disciplinary step had been revoked the employer followed its standard policy with egregious policy violations and skipped two levels of discipline. This placed Ms. Logan at the discharge level and she was notified of the separation by Ms. Babb on June 25, 2009.

Michelle Logan has received unemployment benefits since filing a claim with an effective date of June 28, 2009.

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.

The claimant was a licensed registered nurse and was aware of the need for a doctor's orders before administering an IV and medication. She was also aware of the required protocol to have any person treated at that emergency facility to be registered as a patient to be covered by the hospital's protocols. She failed to do either of these things. Just because the patient was a co-worker and another employee of Mercy Hospital does not relieve her of the responsibility to perform her job as required by the employer's policies and procedures. Any negative consequences of her unilateral administering of the IV and medication could have exposed the employer to legal liabilities because even though she was acting without proper authority, she

was still at the Iowa Speedway as an employee of Mercy Hospital. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

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 claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 28, 2009, reference 01, is reversed. Michelle Logan is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount,

provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs