

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN ULREY
Claimant

APPEAL NO. 09A-UI-01081-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 11/16/08 R: 02
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge for Misconduct
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 16, 2009, reference 01, which found the claimant eligible for benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 10, 2009. The claimant participated in the hearing. Human Resources Business Partners Caroline Burt and Eddie Brown and Mercy Clinic Lab Manager Elizabeth Smith participated in the hearing on behalf of the employer.

ISSUE:

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

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 phlebotomist from August 28, 2007 through November 21, 2008, when he was discharged per the employer's progressive disciplinary policy. He received a verbal warning for unauthorized clocking in and out. On October 27, 2008, the claimant was instructed to do a draw from a patient but he refused, threw 13 specimen labels at the charge phlebotomist, and walked off the job without authorization. On November 4, 2008, he was instructed to do a 6:00 p.m. draw on a patient and he threw the labels on the floor. The nursing unit called the phlebotomist's office at 7:00 p.m. to find out why the draw had not been completed. There was an hour and one-half delay in monitoring a patient's Heparin. Another phlebotomist asked the claimant about a draw on November 16, 2008, that he was supposed to have done the day before. Stacy Renfro, the charge phlebotomist, was in the room at the time the claimant was questioned. The claimant responded angrily by stating that the patient was on the toilet for 15 minutes and he checked on her three times. He said he returned the labels on the cart with the other pending draws. The claimant said he was yelled at all night by the charge nurse for not doing her job and for leaving his pager in the phlebotomy room. He was pointing his finger in Ms. Renfro's face and she told him to get his finger out of her face. The claimant put his finger closer towards her face and said, "This is you" and then moved his finger towards the cart and said, "This is the cart." He

said he did not point at her and then threw a roll of tape on the counter. The claimant then asked her, "What are you going to do, call Elizabeth Smith or Nancy and suck their _____?" Ms. Renfro called the employer and stated she would not work under those conditions. The claimant was subsequently terminated per the progressive disciplinary policy and for creating a hostile work environment.

The claimant filed a claim for unemployment insurance benefits effective November 16, 2008 and has received benefits after the separation from employment.

ISSUE:

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

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 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 per the employer's progressive disciplinary policy. He repeatedly demonstrated inappropriate behavior even after being warned. 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 section 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 section 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 January 16, 2009, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged for misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw