

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GAYLA LEE S MOORE**

Claimant

**APPEAL NO. 14A-UI-00917-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HCI VNS CARE SERVICES**

Employer

**OC: 12/15/13**

**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment  
871 IAC 24.10 – Employer Participation

**STATEMENT OF THE CASE:**

The employer, HCI VNS Care Services (VNS), filed an appeal from a decision dated January 16, 2014, reference 01. The decision allowed benefits to the claimant, Gayla Lee Moore. After due notice was issued a hearing was held by telephone conference call on February 17, 2014. The claimant participated on her own behalf. The employer participated by Human Resources Director Konny Goff, Maternal/Child Health Manager Stacy Jobes and was represented by TALX in the person of Toni Kerr. Exhibits One. Two, Three. Four, and A were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

**FINDINGS OF FACT:**

Gayla Moore was employed by VNS from July 31, 2007 until December 23, 2013 as a full-time coordinator. She had been advised by VNS on more than one occasion, to understand she was an employee of Visiting Nurse Services (VNS), not of the Iowa Department of Public Health (IDPH). Therefore, communication to outside agencies such as IDPH should go through, or at least include, her VNS supervisors. The final warning on this matter was given on May 20, 2013.

On October 8, 2013, the claimant notified her supervisor, Stacy Jobes the sterilization equipment in the dental operatory was not working and copied in dentist Dr. Venker. This dentist is not an employee of VNS but a contractor to provide dental services. Ms. Jobes instructed her to put a sign on the door of that office stating it was closed and to notify the staff. She did not do this. In addition, Ms. Moore later that day sent an e-mail to Dr. Venker

discussing the possible closing of the dental operatory and other work-related issues. This was sent from her work computer on work time but Ms. Jobes was not copied on the message.

The employer was unaware of this e-mail until approximately November 20, 2013, at which time Ms. Jobes requested a copy of the e-mail. It was provided and reviewed by Ms. Jobes, Human Resources Konny Goff and Director Cari Spear. The claimant had been absent and the first opportunity to discuss the matter with her was December 10, 2013. She acknowledged she had communicated with Dr. Venker without copying in Ms. Jobes. She felt he was her supervisor but was actually only the dentist in charge of supervising the dental operatory, and he was not an employee of VNS. The claimant was discharged on December 12, 2013.

The employer did participate in the fact-finding interview. Gayla Moore has received unemployment benefits since filing a claim with an effective date of December 15, 2013.

### **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 had made the claimant fully aware of its concerns about her going outside the VNS business structure even with IDPH. It had been made clear to her such matters were first to be discussed with her VNS supervisors. She continued to ignore this requirement and communicated with those outside the employer's organization.

The employer has the right to expect employees to maintain communication with supervisors before going outside the office. The claimant's continued violation of this requirement is conduct not in the best interests of the employer and she is disqualified.

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 § 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 employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The unemployment insurance decision dated January 16, 2014, reference 01, is reversed. Gayla Moore is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The claimant is overpaid unemployment benefits in the amount of \$2,448.00. This must be recovered in accordance with the provisions of Iowa law.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs