

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GINA NELSON**  
Claimant

**APPEAL NO: 10A-UI-14185-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL**  
Employer

**OC: 09/12/10**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Mercy Hospital (claimant) appealed an unemployment insurance decision dated October 7, 2010, reference 01, which held that Gina Nelson (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 1, 2010. The claimant participated in the hearing. The employer participated through Susan Biller, Human Resources Business Partner, and June Engel, Clinic Team Leader of the Iowa Heart Center in Carroll, Iowa. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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 registered nurse from October 1, 2009 through September 15, 2010, when she was discharged for practicing outside the scope of her license. She actually began working for the Iowa Heart Center on August 18, 1997, but did not become a Mercy employee until it purchased the clinic in October 2009.

The employer's policy regarding its nurses filling non-cardiac medications is to inquire as to where the non-cardiac medication was ordered. If there is a medication order by the employer's physicians in the records, the medication can be ordered. If there is no medication order in the file, the nurse is to refer the patient to their primary care physician or to whomever ordered the medication in the first place. The claimant had referred patients back to the physicians that ordered the medication when the patient was requesting a refill. However, she told the employer that she was not aware this was the employer's policy.

The employer discovered the claimant had ordered 23 refills for one particular patient in the last two and one-half years without referring that patient to the doctor or doctors who originally ordered that medication. The claimant had a personal relationship with this patient. She ordered these

medications to be refilled without checking the electronic medical record to see if the medication was ordered by the employer's physician and without getting the employer's physician's approval.

The employer conducted an investigation and two of the providers the claimant issued refills under had never prescribed the specific non-cardiac medication to the patient or any of their patients. The employer also reviewed another 100 random patient charts and these charts revealed no non-cardiac medications were inappropriately refilled by its employees.

Since the claimant did not check the electronic medical record and did not obtain a physician's authorization for the prescription refills on this one patient, she was essentially prescribing the medication for the patient, which is outside the scope of her practice as a registered nurse.

The claimant filed a claim for unemployment insurance benefits effective September 12, 2010 and has received benefits after the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 on September 15, 2010 for practicing outside her nursing license. She contends she did not know that she needed to refer the patient back to the

physician who originally ordered the non-cardiac medication. However, the claimant's contentions are not found credible.

Common sense would dictate that a physician who ordered a medication for a specific medical condition for a patient would need to be consulted about refilling that medication. Based on the fact that the claimant had referred patients wanting refills back to their physicians who had originally ordered the medication and the fact that the claimant has extensive medical training and experience, her actions are found to be intentional. 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 § 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 § 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 October 7, 2010, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/kjw