

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY L PARRISH**  
Claimant

**APPEAL NO. 11A-UI-02360-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 01/23/11**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Care Initiatives filed a timely appeal from a representative's decision dated February 17, 2011, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on March 24, 2011. The claimant participated personally. The employer participated by Marcy Schneider, hearing representative, and witnesses Lisa Roederer, director of nursing, and Emily Simpson, charge nurse. Employer's Exhibits One and Two were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Amy Parrish was employed by Care Initiatives from April 29, 2010, until January 21, 2011, when she was discharged from employment. Ms. Parrish held the position of full-time certified nursing assistant and was paid by the hour. Her immediate supervisor was Lisa Roederer.

The claimant was discharged based upon an incident that occurred on January 20, 2011. On that date, Ms. Parrish was sitting adjacent to Emily Simpson, a charge nurse. Ms. Simpson was preparing to destroy out-of-date or otherwise unusable medications. Ms. Simpson observed that the claimant had taken a "blister pack" that was partially full of a controlled substance and that the claimant was attempting to manipulate the package while appearing to read a magazine. Ms. Simpson pulled the magazine away and observed Ms. Parrish holding the package. Based upon the claimant's movements, the noise that was emitted, and signs on the package that entry had been attempted, Ms. Simpson concluded that the claimant was attempting to obtain one or more of the controlled substances within the package. Although Ms. Simpson stated her belief to the claimant, Ms. Parrish did not respond. The director of nursing counted the tablets in the package and determined one tablet was missing.

Ms. Simpson had counted the tablets in the package immediately before Ms. Parrish had taken the package from a table area between the parties.

Because of the claimant's conduct that Ms. Simpson had personally observed and because the claimant was not authorized to handle medications for non-work-related purposes, a decision was made to terminate Ms. Parrish from her employment. The claimant had been previously warned for violating company policy and had been put on notice at that time that further unacceptable conduct could result in her termination from employment.

It is the claimant's position that she was not attempting to misappropriate the contents of the package but was merely "fidgeting" with it while she "read a magazine."

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

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

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.

In this matter, Ms. Parrish was discharged after she was personally observed by the charge nurse on the night of January 20, 2011, taking a packet of medications from a table area where the charge nurse had placed them and then manipulating the package in a hidden manner underneath a magazine that Ms. Parrish appeared to be reading. Because of the “rustling noise” made by Ms. Parrish, Ms. Simpson became alerted and confronted the claimant. Ms. Simpson then observed areas on the blister pack where the claimant had attempted to open the package. A subsequent count showed that one of the previously counted tablets was missing.

After discovering Ms. Parrish’s activities, Ms. Simpson clearly stated her belief that Ms. Parrish was attempting to take the medications without authorization and further indicating to Ms. Parrish that disciplinary action would follow. The claimant did not dispute the allegation nor provide any explanation at the time to her supervisor.

Because the claimant was not authorized to handle the medications and the employer was reasonable in its suspicion that the claimant was attempting to misappropriate the controlled substance, Ms. Parrish was discharged from employment. She had previously been warned regarding another manner that further violations of policy could result in her dismissal from work.

Although the administrative law judge is aware that Ms. Parrish maintains that her intention was not to misappropriate the drugs and that she was only “fidgeting” with the package while reading a magazine, the administrative law judge concludes that the claimant’s testimony strains credibility. The administrative law judge finds the employer to be reasonable in its conclusion that Ms. Parrish had taken possession of the prescription medications without authorization and that she was attempting to misappropriate some of the blister pack contents.

This conduct showed a willful disregard of the employer’s interests and standards of behavior and was thus disqualifying under the provisions of the Iowa Employment Security Law. Benefits are withheld.

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 issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

**DECISION:**

The representative's decision dated February 17, 2011, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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