

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE C KING

Claimant

APPEAL NO. 13A-UI-13153-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREAT RIVER MEDICAL CENTER

Employer

OC: 10/27/13

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, Great River Medical Center (GRMC), filed an appeal from a decision dated November 20, 2013, reference 01. The decision allowed benefits to the claimant, Stephanie King. After due notice was issued, a hearing was held by telephone conference call on December 18, 2013. The claimant participated on her own behalf. The employer participated by Director of Human Resources Cara Sanders, Human Resources Generalist Christy Ford, Director of Nursing (DON) Ann Hannum, Administrator Ann Abolt, and Nursing Manager Cara Blow.

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:

Stephanie King was employed by GRMC from May 11, 2010 until November 2, 2013 as a part-time certified nursing assistant (CNA). She received a copy of the code of conduct at the time of hire. The code requires, in part, for employees to obey all relevant state and federal laws regarding their job position.

On October 29, 2013, a nurse at the facility reported she had been at a party over the weekend with Ms. King and the claimant was heard talking about an incident in April 2013 where she had been given Vicodin tablets by another employee. Vicodin is a controlled substance available only by prescription and the claimant did not have a prescription.

The employer questioned Ms. King that same day and she admitted she had asked another employee for something to relieve her headache and the co-worker had given her two tablets saying they were Vicodin and she took them. The claimant said they "might" have come from a

resident's medication but she never reported the incident to management. The other employee admitted to giving Ms. King the Vicodin but she thought she took them in the parking lot but the Vicodin was her own prescription and had not come from a resident.

The employer questioned Ms. King again on October 30, 2013, and she was asked about whether she knew it was illegal to take prescription medication not prescribed for her, that taking a resident's medication was dependent adult abuse, and that she should have reported it. She admitted to knowing all these things.

The employer conferred and discharged the claimant on November 1, 2013, for violation of the code of conduct and applicable state and federal law. Stephanie King has received unemployment benefits since filing a claim with an effective date of October 27, 2013. The employer did participate in the fact-finding interview.

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 took medication she knew was a controlled substance, that she did not have a prescription for it, and that if there was any chance it might have come from a resident, she should have reported it. She neglected all of these responsibilities and obligations. As a CNA she was obliged to report any potential resident abuse to allow for an investigation and did not do so. This potentially jeopardized the employer's best interests as it could have exposed

GRMC to investigation by state authorities and resulted in fines or loss of license. This is conduct not in the best interests of the employer and the claimant 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 section 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 November 20, 2013, reference 01, is reversed. Stephanie King 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 \$1,348.00. This must be recovered in accordance with the provisions of Iowa law.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css