

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABBY HOMANN
Claimant

APPEAL NO: 15A-UI-04088-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLACK HAWK COUNTY
Employer

OC: 03/08/15
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 23, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 3, 2015. The claimant participated in the hearing. Terry Helinski, Health Promotions Bureau Manager; Audra Heineman, Human Resources Coordinator; and Corrine Powers, Health Promotions Service Supervisor participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven) were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time home health aide for Black Hawk County from August 22, 2005 to March 10, 2015. She was discharged for violating the employer's work rules regarding falsification of employer records and honesty in the workplace (Employer's Exhibit Four).

On February 19, 2015, a client called the employer at 9:30 a.m. to ask if a substitute was coming instead of the claimant because the claimant had not arrived for her scheduled 9:00 a.m. shift yet. The employer did not receive the message until around 11:00 a.m. and called the client back at 11:10 a.m. The client told the employer the claimant arrived around 9:40 a.m. The employer reviewed the claimant's documentation and found she indicated on her time sheet, the home care aide sheet, which is part of the electronic health record (EHR), and the super bill, which is also part of the EHR, that she arrived at 9:00 a.m. and worked until 11:00 a.m. She also called in her daily units to Health Promotion Service Supervisor Corrine Powers. The employer bills in 15-minute increments and a unit is 15 minutes in length. The claimant told Ms. Powers she worked eight units or two hours with that client who was on the

Medicaid Elder Waiver program. The employer consulted with the county attorney who recommended the employer conduct a cursory examination of the claimant's client records.

The employer met with the claimant March 5, 2015, for a preliminary fact-finding meeting. It offered her union representation both when it called her to set up the meeting and at the time of the meeting but the claimant declined representation. The employer asked the claimant why she documented on her time sheet and in two places on the EHR that she spent two hours, from 9:00 a.m. to 11:00 a.m. at the client's house, and why she called in eight units. The claimant stated she made a mistake because she was usually there two hours. The employer gave the claimant an opportunity to tell it of any other recent discrepancies and the claimant mentioned an incident from 2009 for which the claimant received counseling about recording her time worked. That evening, following the meeting with the employer, the claimant logged on to the computer program and altered the EHR to show she worked six units instead of eight with the client on February 19, 2015. On March 6, 2015, Health Promotions Bureau Manager Terry Helinski called the claimant to ask why she went into the clinical record at night and altered it. The claimant stated she was double checking everyone's sheets for that day. Unbeknownst to employees, the employer can see what client records have been accessed. The claimant accessed one client's records and the computer system confirmed she was on the system for two minutes. Ms. Helinski asked her why she entered eight units on the bill and the claimant again stated because she usually worked eight units or two hours there. Ms. Helinski asked the claimant if it was true she had to manually enter the number of units each time she works on a client's bill and the claimant agreed that was the case. The employer had billed Medicaid for eight units and had to go back and change the bill to six units.

The employer continued its investigation and in reviewing the claimant's employer-provided cell phone records, times and dates the claimant documented she was in the client's home and direct client services and discovered calls to clients when the claimant had indicated she was at the client's home on February 6, 11, 26, 27 and March 3, 2015 (Employer's Exhibit Seven).

On March 9, 2015, Ms. Helinski called the claimant and stated the employer had concluded its investigation and wanted to meet with the claimant March 10, 2015. The claimant called the employer back March 10, 2015, and asked if she was going to be discharged and was informed she was. The claimant brought a union representative to that meeting and the employer informed her it was terminating her employment for the incident February 19, 2015, and the five other incidents it learned of during its investigation.

The claimant has claimed and received unemployment insurance benefits in the amount of \$4,416.00 for the 13 weeks ending June 13, 2015.

The employer personally participated in the fact-finding interview through the statements of Health Promotions Bureau Manager Terry Helinski and Human Resources Coordinator Audra Heineman.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts of omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant falsely documented the time she spent with a client February 19, 2015. She indicated she spent two hours providing care to the client when she had actually only been with the client approximately one hour and twenty minutes. She documented the false information on her time sheet, home care aide sheet and the super bill, the last two of which were part of the EHR. While the claimant maintains it was simple human error, the fact that she stated she was at the client's home for two hours on three different required forms, including the forms the employer uses to bill Medicaid, makes her contention less credible.

The forms used by the employer to bill Medicaid are extremely important and the employer trained the claimant on how to properly complete those documents. If the forms are incorrectly filled out the employer can be charged with Medicaid fraud. In addition to the February 19, 2015, situation, the employer found five other questionable incidents where the claimant was on the phone to clients whose homes she was supposed to be at during the time of the calls, in a limited investigation of the claimant's records. Those records suggest a pattern of the claimant

not being honest when completing her paperwork. Even disregarding those incidents, however, the claimant's actions February 19, 2015, violated the employer's policies on work rules and honesty.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

871 IAC 24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code § 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in [871—subrule 24.32\(7\)](#). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code § 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code § 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division

administrator constitutes final agency action and may be appealed pursuant to Iowa Code § 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code § 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code § 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

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.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Health Promotions Bureau Manager Terry Helinski and Human Resources Coordinator Audra Heineman. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of \$4,416.00.

DECISION:

The March 23, 2015, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 claimant has received benefits but was not eligible for those benefits. The employer did personally participate in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$4,416.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css