

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMMY A HEARN**  
Claimant

**APPEAL NO. 11A-UI-14085-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 10/02/11**  
**Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Care Initiatives filed a timely appeal from an unemployment insurance decision dated October 21, 2011, reference 01, that allowed benefits to Tammy A. Hearn. After due notice was issued, a telephone hearing was held November 17, 2011 with Ms. Hearn participating. Administrator Kristin Kramer and Business Office Manager Heather Zumbach testified for the employer which as represented by Treve Lumsden of TALX UC eXpress. Exhibit One was admitted into evidence. The administrative law judge takes official notice of Agency benefit payment records.

**ISSUE:**

Was the claimant discharged for misconduct?

**FINDINGS OF FACT:**

Tammy A. Hearn was employed by Care Initiatives from January 31, 2011 until she was discharged October 3, 2011. She worked as a payroll and accounts payable clerk.

Ms. Hearn was on vacation the week of September 26, 2011. While she was out of the office, the employer discovered stacks of unopened mail in her office. These included rent checks to the employer from the families of residents and social security checks that were to be deposited on behalf of residents. Also in the stacks of mail were unpaid bills. There was also mail addressed to residents that had not been passed along to the activities director. The search came about because the family of a resident brought in a receipt showing that the family had given Ms. Hearn \$200.00 in cash to be used for the resident. The receipt was dated September 8, 2011, but the cash had not been deposited in the resident's account.

The employer confronted Ms. Hearn when she return from vacation on October 3, 2011. Ms. Hearn knew where the cash was. Although she had forgotten the name of the family and resident involved, she had not told anyone of the situation. Ms. Hearn was aware of some of the problems but had not addressed them or asked for assistance. Ms. Hearn had previously worked as a business office manager.

She has received unemployment insurance benefits since filing a claim effective October 2, 2011.

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

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

Ms. Hearn acknowledged that she knew of some of the problems raised by the employer. She acknowledged that she had not completed her tasks and had not sought assistance. The administrative law judge concludes from the evidence that Ms. Hearn knowingly did not complete important tasks that were her responsibility. This is sufficient to establish misconduct. Benefits must be 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 question of whether the claimant must repay the benefits she has received is remanded to the Unemployment Insurance Services Division.

**DECISION:**

The unemployment insurance decision dated October 21, 2011, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The question of repayment of benefits is remanded.

---

Dan Anderson  
Administrative Law Judge

---

Decision Dated and Mailed

css/css