

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERA R PRIES
Claimant

APPEAL NO. 13A-UI-01695-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PEOPLES COMMUNITY HEALTH CLINIC
Employer

OC: 01/06/13
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

Peoples Community Health Clinic filed a timely appeal from a representative's decision dated February 8, 2013, reference 03, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on April 9, 2013. The claimant participated. The employer participated by Ms. Beth White, Human Resource Administrator.

ISSUE:

At issue is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Tera Pries began employment with People Community Health Clinic on November 1, 2011. Ms. Pries was employed as a full-time patient registration representative and was paid by the hour. Her immediate supervisor was Wendy Hoth. Ms. Pries was discharged on January 2, 2013 based upon the employer's reasonable conclusion that Ms. Pries had provided untruthful statements about cash box and deposit shortages and because the claimant had failed to follow required cash box procedures. The claimant had been warned and had received retraining on December 6, 2012 on deposit and cash box requirements.

Each registration representative is given their own "cash box" to be used by the representative to store proceeds from copays and payments made by patients throughout each business day. The employer has a required procedure for documenting receipts for payments received and each representative is to balance their cash box at the end of each business day. If balanced correctly, all the receipts match the amounts of proceeds taken in and a \$100.00 cash bank is to remain in each box for the beginning of the next day's business. The receipts are deposited and accounted for each day and registration representatives are required to notify the office manager immediately if the amounts do not balance or there are any overages or shortages. Cash boxes are not allowed for any other purpose except for receiving payments from patients.

Ms. Pries was aware of the employer's cash box receipt and deposit policies and had acknowledged being given the policies. Ms. Pries had also received retraining and a warning on December 6, 2012 because of a cash shortage at that time.

Ms. Pries was absent on December 26, 2012 and a second employee was instructed to use the cash box normally assigned to Ms. Pries that business day. The employee checked the box and found the box to be \$30.00 short of the \$100.00 bank that was to have remained in the box when Ms. Pries closed it out the preceding work day. The shortage was immediately reported to company management. The amount was recounted by the second employee and the Company's Deputy Director, and recounted at the close of business on December 26 and found to still be \$30.00 short of the \$100.00 bank. The \$100.00 was to have remained in the box when Ms. Pries had balanced and closed it out on the day that she had worked, preceding December 26, 2012. Ms. Pries had not reported any shortages to her manager at that time, as policy required.

On the morning of December 27, 2012, Ms. Pries returned to work and was observed by security cameras going to the cash box and placing something into the box from her purse. Then, at 9:30 a.m. that morning Ms. Pries sent her supervisor an email stating that the box was "\$20.00 off." At the end of the day the day's proceeds were balanced, by Ms. Pries, with the \$20.00 shortage factored in. Later that evening the clinic's deputy director went to the locked area to check cash boxes and found that Ms. Pries had placed a personal lock on her bank box, in addition to placing it inside the locked cabinet. The following day the bank box was opened by Ms. Pries in the presence of the deputy director. In the box was found a small amount of change (\$.12) in addition to the \$100.00 bank that was expected to be there. Ms. Pries was instructed to account for the \$.12 by putting it into the correct deposit and agreed that she would do so. Because the employer at that point, was very closely observing Ms. Pries and her handling of funds, the employer repeatedly checked in the next few days to verify that the small amount of change had been accounted for in a deposit. Ms. Pries repeatedly verified to her employer that it had been accounted for and placed in a deposit. Because there was no deposit reflecting the amount had been made, she was questioned further. On January 2, 2013, the claimant admitted that she had been untruthful about depositing the change. Ms. Pries then transacted the deposit.

Based upon the events that had unfolded between December 26, 2012 and January 2, 2013, the employer concluded that the claimant had not initially reported a cash shortage, and may have removed the funds. The company also concluded that the claimant had then attempted to replace some of the initial \$30.00 that was missing. The claimant later reported a \$20.00 shortage after the employer had verified a \$30.00 shortage the preceding night. The employer also concluded that the claimant had again been untruthful about the deposit of the small change showing a pattern of deception.

It is Ms. Pries' position that she did not know that her cash box was short when she last used it prior to December 26 and that she found it "\$20.00 short when she returned to work." It is claimant's further position that the small change was never unaccounted for and she had just answered "Yah" when repeatedly asked to verify if that deposit had been made prior to January 2, 2013

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. 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.

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 insurance 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 Ct. of Appeals 1992).

In this matter the evidence shows that the employer had a set policy and procedure for accounting for cash taken in by registration representatives. Each representative was assigned their own cash box and expected to accurately account for funds taken in during each business day. Each representative is required to count the contents, compile results and balance each box leaving a "\$100.00 bank" at the conclusion of each business day to be used for change for the following day. Ms. Pries did not report a cash shortage on the last day that she worked preceding December 26, 2012, however, when a second employee unexpectedly replaced the claimant by using her cash box the next working day the box was determined to be \$30.00 short and verified by the clinic's deputy director. The claimant was observed placing something in the box when she arrived at work the next morning and then Ms. Pries reported a cash shortage in the box of \$20.00, \$10.00 less than the exact amount counted and verified by her employer. When the employer again found Ms. Pries to be repeatedly untruthful about a small cash discrepancy and whether it had been deposited, the employer reasonably concluded that at a minimum the claimant was making untruthful statements about cash handling and Ms. Pries was discharged from employment.

The employer has established that the claimant's conduct of failing to provide accurate information about cash shortages and deposits was in willful disregard of the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. The employer has therefore met its burden of proof in establishing the claimant's discharge from employment took place under disqualifying conditions.

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.

DECISION:

The representative's decision dated February 8, 2013, reference 03, 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 is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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