

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELINDA GERRISH
Claimant

APPEAL NO: 12A-UI-09953-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 07/01/12
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Good Samaritan Society, Inc. (employer) appealed an unemployment insurance decision dated August 7, 2012, reference 01, which held that Melinda Gerrish (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 11, 2012. The claimant participated in the hearing. The employer participated through Joyce Doughty, Executive Manager and Isaac Gerdes, Administrator in Training. Employer's Exhibits One through Six were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time director of the home health care agency from July 16, 2009 through June 27, 2012 when she was discharged for failure to carry out her job duties. She was acting bizarre and unusual on May 9, 2012; she was agitated, talking non-stop, and could not sit still. The claimant said she thought she may have taken her daughter's ADHD prescription medication. The employer learned about this on May 10, 2012 and was going to give her a drug test but the claimant had left and could not be found. She was given a drug test then on May 11, 2012 and suspended. Since the drug test was not done within 24 hours, it was negative and the claimant was reinstated with pay on May 15, 2012.

The claimant was placed on a performance improvement plan on May 15, 2012 for numerous issues. There were complaints from staff and clients' families that the claimant could not be reached and did not return phone calls. The claimant also missed conference calls even though she had been reminded about the calls. She did not communicate with the executive manager when she was out of the office for blocks of time. Additionally, the claimant was not completing recertifications in a timely manner and orders were not being printed and sent to physicians

within the seven day requirement. It was the claimant's responsibility to ensure the agency was in compliance with the law and she was advised she needed to have all current client records audited by May 31, 2012 and the first quarter audits for 2012 also needed to be completed.

The performance improvement plan was extended on June 18, 2012 to July 6, 2012 due to unresolved issues. The claimant had completed many requirements but had not recruited members for the advisory board, had not reviewed personnel files for all required items, had not taught nurses to run orders and had not scheduled four marketing calls which needed to be done prior to a June 12, 2012 meeting but had been rescheduled to June 26, 2012. There were continued complaints that the claimant was not able to be reached and did not return phone calls.

The claimant was discharged on June 27, 2012 when she failed to complete her job duties and the employer learned about other duties she had not completed. It was discovered she had not completed the billing requirements for clients since January 2012. Additionally, the claimant was responsible for five clients on a research project called Living Well at Home. The employer had asked her about the paperwork and she claimed it had been done and sent in but the paperwork had never been received. After her termination, it was discovered three of the clients' paperwork had not been completed so it was impossible for her to have completed it and sent it in. Furthermore, one client had consented in February 2012 to participate in the program but the claimant never loaded the information into the system and never went to the client's home to draw up a floor plan to the equipment in the client's home.

The claimant filed a claim for unemployment insurance benefits effective July 1, 2012 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on June 27, 2012 for repeatedly failing to follow directives and not performing her job duties. She had been advised her job was in jeopardy as a result of her failure to perform her job duties as required. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant's failure to do her work as required is a violation of the duties and responsibilities the employer has the right to expect of an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated August 7, 2012, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css