

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SAMANTHA ROTH**  
Claimant

**APPEAL NO. 11A-UI-04715-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 03-06-11**  
**Claimant: Respondent (2-R)**

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 31, 2011, 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 May 5, 2011. The claimant provided a phone number prior to the hearing but was not available at that number when called for the hearing. Attorney Fred Stiefel participated in the hearing on behalf of the claimant. Dori Brennecke, administrator, participated in the hearing on behalf of the employer with Employer Representative David Williams. Employer's Exhibits One through Five 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 LPN charge nurse for Care Initiatives from September 18, 2008 to March 8, 2011. On March 2, 2011, the claimant took orders from a physician's office regarding narcotic pain medication for a resident and she failed to note the orders on the medical administration record (MAR) (Employer's Exhibit One). Consequently, the resident received the incorrect dosage of the medication on several occasions during March 2 and 3, 2011. After completing a detailed investigation, the employer terminated the claimant's employment for repeated medication errors (Employer's Exhibit One). On January 20 and March 30, 2009, the claimant received verbal warnings for incorrectly noting doctors' orders. On April 27, 2009, she received a verbal warning for a narcotic medication error and on February 9, 2010, she received a verbal warning for failure to properly document the administration of a narcotic medication (Employer's Exhibit Three). On June 15, 2010, she received a written warning for failing to document and follow through with the clarification of a doctor's order, resulting in a medication error (Employer's Exhibit Four). On July 26, 2010, she received a final written warning for failing to properly document a medication order, which resulted in a medication error (Employer's Exhibit Two). The claimant and other employees

were retrained with regard to medication orders, documentation and medication administration February 21, 2011. On March 1, 2011, Administrator Dori Brennecke met with the claimant in the office and reminded her she could not make any further medication errors prior to June 2011 or her employment would be terminated. The claimant did not dispute the facts surrounding the March 2, 2011, call from the doctor or that she failed to document the change in medication on the MAR (Employer's Exhibit One).

The claimant has claimed and received unemployment insurance benefits since her separation from this employer.

### **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.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant received four verbal warnings, one written warning, and one final written warning regarding medication and documentation errors between January 20, 2009, and March 2, 2011. Despite the repeated warnings, retraining, and a conversation with the administrator March 1, 2011, that another medication error would result in the claimant's termination, the claimant failed to note a physician's order changing a

resident's narcotic medication order on the MAR March 2, 2011, which resulted in other nurses administering the incorrect dosage of the medication to the resident over the following two days. 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.

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. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The March 31, 2011, 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 matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw