

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANNAH NESLER**

Claimant

**APPEAL NO: 12A-UI-07465-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE EASTER SEAL SOCIETY OF IA INC**

Employer

**OC: 05/27/12**

**Claimant: Respondent (2/R)**

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

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

The Easter Seal Society of Iowa, Inc. (employer) appealed an unemployment insurance decision dated June 19, 2012, reference 01, which held that Shannah Nesler (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 July 17, 2012. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Sara Hardy, Director of Human Resources and Ashley Perez, Team Leader. Employer's Exhibits One through Three 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 independent living skills professional from January 30, 2012 through May 24, 2012 when she was discharged for multiple documentation and medication errors. Although no formal warnings were issued to her, the employer counseled her repeatedly. The claimant was coached on February 27, 2012 for using her cell phone while on shift with a client. The employer coached her on her failure to provide documentation on April 23, 2012.

The claimant was counseled on May 1, 2012 for medication errors when she gave a medication to a client but failed to document that it was given. She was counseled again on May 2, 2012 for a separate medication error. The employer counseled the claimant on May 11, 2012 because she had completed no progress notes for the month of April 2012. The employer cannot bill for the services it provides without daily progress notes. The employer gave the

claimant until May 14, 2012 to complete those notes but she failed to provide those notes by Monday.

Steven Slye visited the house where the claimant worked on May 13, 2012 in preparation for the Easter Seals Iowa CARF survey. He noticed the claimant did not have the medicine cabinet key on her person and he asked her about it, she claimed it was broken. Mr. Slye stated that he thought it had been fixed and she then stated she did not know where it was located as she had not been shown. The cabinet was located and was not broken. Mr. Slye also found a written memo from Ashley Perez explaining this information.

Mr. Slye told the claimant that it was her responsibility to carry the key since she was the medication manager and that it was her responsibility to read all communication from her leader and teammates. He also discovered that the claimant was going to leave one client home alone while she drove the van to pick up another client. Mr. Slye told the claimant this was not acceptable as this particular client was never allowed to be alone. Mr. Slye documented the above information for the employer.

There were more medication errors for which the claimant was counseled on May 18, 2012. The employer received the information from Mr. Slye and met with the claimant on May 21, 2012 regarding these issues. After the employer reviewed the information with management, the decision was made to discharge the claimant and that occurred on May 24, 2012.

The claimant filed a claim for unemployment insurance benefits effective May 27, 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 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 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 for multiple medication errors and a repeated failure to follow policy. 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 had been informally counseled multiple times but continued to disregard the employer's policies and procedures. Additionally, the medication errors were negligent. Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v Iowa Department of Job Service*, 391 N.W.2d 731 (Iowa App. 1986). The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. 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 June 19, 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs