

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMI JOHNSON
Claimant

APPEAL NO: 13A-UI-03981-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MERCY HEALTH SERVICES – IOWA CORP
MERCY MEDICAL CENTER – NORTH IOWA**
Employer

**OC: 03/03/13
Claimant: Respondent (2/R)**

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

STATEMENT OF THE CASE:

Mercy Medical Center – North Iowa (employer) appealed an unemployment insurance decision dated March 26, 2013, reference 01, which held that Tami Johnson (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 May 8, 2013. The claimant participated in the hearing. The employer participated through Heidi Willrett, Employee Relations Coordinator. Employer's Exhibit's One was 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 patient access representative from July 26, 1994 through March 7, 2013 when she was discharged due to falsification of her time records. She called in prior to her 11:00 p.m. shift on February 21, 2013 to report that she was going to be late. The claimant spoke to her co-worker, with whom she shares a desk since the claimant works the shift after the co-worker. The co-worker used the telephone at their desk and the claimant's identification number and clocked her in at 11:00 p.m. when the surveillance cameras confirmed the claimant had not yet arrived in the facility. The claimant is recorded to have arrived in the facility at 11:03 p.m. and sat down at her desk at 11:05 p.m. She is seen picking up her phone as if she was going to clock in and the co-worker yelled, "Tammy don't!" The claimant told her, "Shut up, I know what I'm doing!" The employer conducted a full investigation and verified the information through different recordings. The claimant was discharged after the employer confirmed she falsified her time records.

The claimant had received a first and final warning on October 27, 2011 for breach of confidentiality and HIPAA after she inappropriately accessed a minor's patient record. This was her husband's son and the child's mother made the complaint. The claimant had accessed the patient's medical records without authorization and then sent a request for additional information from Four Oaks. The employer thoroughly investigated this breach of confidentiality and there was no business reason for the claimant to have accessed this patient's records at the time she did so. The warning advised her that she would be immediately terminated for any future related violation. Although it was not specifically spelled out in the warning, a related violation would include any falsification or misrepresentation of information. However, the claimant's time falsification was sufficient to result in discharge without any prior warnings.

The claimant filed a claim for unemployment insurance benefits effective March 3, 2013 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 for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on March 7, 2013 for falsification of her time records. While she denies all wrongdoing, her testimony is not credible. The claimant's answers were inconsistent and she was not forthright in answering questions. She denied receiving a warning in October 2011 until the warning was requested and admitted into the record, she denied violating the HIPAA policy even though the computer records verified she accessed a minor patient's medical records without authorization, she denied receiving any other warnings even though she received six formal disciplinary warnings, and she repeatedly mischaracterized the evidence provided by the employer even after multiple clarifications were provided. The employer has established by a preponderance of the evidence that the claimant falsified her time records. This is a violation of the duties and responsibilities the employer has the right to expect of an employee conduct not in the best interests of 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 March 26, 2013, 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/pjs