

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORMA J PALIMORE
Claimant

APPEAL NO. 10A-UI-16087-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

OC: 09/19/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 12, 2010, reference 01, that concluded Norma Palimore's discharge was not for work-connected misconduct. A telephone hearing was held on January 12, 2011. The parties were properly notified about the hearing. Palimore participated in the hearing. Pattie Steelman participated in the hearing on behalf of the employer with a witness, Elizabeth Smith.

ISSUES:

Was Norma Palimore discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Norma Palimore worked as a phlebotomist for the employer from October 7, 1986, to September 15, 2010. She was informed and understood that under the employer's work rules, she could be discharged for failing to follow the employer's policies.

She had received a written warning on January 16, 2009, for putting the wrong patient name on a blood sample tube. She received a written warning on January 22, 2010, for labeling a blood sample tube with the information for the wrong patient. She received a written warning and one-day suspension on March 20, 2010, after she affixed the label for one patient on the blood sample tube for another patient and vice versa. In the written warnings, Palimore was told that discipline up to and including discharge could occur if the problems continued. On September 2, 2010, a supervisor reviewed the venipuncture steps that include labeling the tubes immediately following the blood draw with the patient name, birthday, time, and employee ID.

On September 9, 2010, Palimore had a list of blood draws to do that morning. She entered a patient's room, verified it was the correct patient, and prepared the patient for the blood draw. After she had applied the tourniquet and was about to stick the patient, the patient asked her to

stop because he needed to use the bathroom. She removed the tourniquet and allowed the patient to go to the rest room. At some point, Palimore put the patient's accession labels on the tubes, wrote the time down, and put her identification on the labels in violation of the policy because she had not yet drawn blood from the patient. After waiting for some time and recognizing that the patient was not returning right away, Palimore exited the room to take care of other patients. She ended up leaving the tubes in the room in a bio-hazard bag to use when she returned to draw blood from the patient. Somehow, the bag with the empty labeled tubes ended up in the lab. The employer found out about the labeled tubes when Palimore retrieved them from the lab.

Palimore was questioned by a supervisor about what she had done later in the day, and she was counseled again about not labeling the tubes until after the blood is drawn.

The supervisor reported the matter to human resources, and an investigation was conducted including taking statements on September 13, 2010, from Palimore and two other employees who had seen the empty labeled tubes. Palimore was discharged on September 15, 2010, for violating the policy prohibiting employees from labeling blood specimens until after the blood is drawn.

Palimore filed for and received unemployment insurance benefits for the weeks between September 19, 2010, and February 5, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether Palimore was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

Palimore's violation of policy requiring labeling after blood is drawn was a willful and material breach of the duties and obligations to the employer, especially since she had received instructions about this a few days before September 9. She insisted she had followed the policy, but since she did not draw blood from the resident, she must have violated the policy because the tubes had labels on them with the time and her identification number. She had several warnings regarding mislabeling samples for which she admitted she was at fault. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The law requires that a discharge be based on a current act of misconduct. 871 IAC 24.32(8) I conclude the six days from the incident to discharge was not an unreasonable delay considering the need to investigate what happened.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated November 12, 2010, reference 01, is reversed. Norma Palimore is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw