

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SERENA D SHEROD
Claimant

APPEAL NO. 08A-UI-02760-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OTTUMWA REGIONAL HEALTH CTR INC
Employer

OC: 02-24-08 R: 03
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 18, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 3, 2008. The claimant did participate. The employer did participate through (representative) Janey Huston, Employment Coordinator, and Andrew Chenoweth, Program Director of the Acute Rehab Unit. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a RN, full-time, beginning December 5, 2005, through February 26, 2008, when she was discharged.

On February 19 the claimant had been disciplined for treating other staff members and patients in a rude or unprofessional manner. The claimant was disciplined for her behavior toward others and she was specifically told that she should not retaliate or threaten other employees and if she did so, her employment would be jeopardized. On February 25 the employer learned from another employee that the claimant had told another employee that she was hunting to learn who had reported her and that she was going to retaliate against whoever it was. The claimant had been specifically told not to threaten or retaliate against those who complained about her.

The claimant has received unemployment benefits since filing a claim with an effective date of February 24, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 claimant was disciplined for complaints made against her. The claimant was specifically told that she should not try to discover who made complaints about her and that she should not retaliate against those who made complaints about her. The claimant made a comment to another staff member indicating that she was hunting for those employees who had complained about her and that she planned to get even with those who did complain about her. Her threat to retaliate and her attempt to discover who complained about her are a direct violation of Mr. Chenoweth's instructions that she not do so; which constitutes disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to

the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The March 18, 2008, 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 is overpaid benefits in the amount of \$274.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw