

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAIL R MOORE
Claimant

APPEAL NO: 14A-UI-09271-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 08/10/14
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 27, 2014 (reference 02) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant did not respond to the hearing notice or participate at the September 25 hearing. Tracy Kennis, Program Director, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

Has the claimant been overpaid any benefits?

FINDINGS OF FACT:

The claimant started working as the employer's full-time program coordinator in June 2012. The claimant was in charge of a facility that had four clients with disabilities living at the facility. In early September 2013, the employer started giving the claimant written warnings for various issues.

On May 22, 2014 the employer discovered clients' food stamp cards had been used for ten transactions, but no receipts had been turned in for these transactions. The employer talked to the claimant within a few days of May 22. During this discussion, the claimant indicated that while she had not done the grocery shopping in connection with the ten transactions, she would from that day forward do all the grocery shopping and receipts would be turned in for all transactions.

In late June the employer discovered food stamp cards had been used for four transactions since May 22 and only one receipt had been turned in. The employer again talked to the claimant about this issue in early July. After early July there were no problems of a similar nature.

On June 2 the claimant received a final warning for failing to complete documentation necessary for the employer to bill for services provided to clients. As of June 2014 the claimant had not completed documentation for April and May 2014. After the employer terminated the claimant, the employer discovered paperwork for April through July that had not been documented so the employer could bill for services provided.

In January 2014 one of the clients received a prescription for glasses. It was the claimant's responsibility to make sure the client received these glasses. In June the client asked the employer about his glasses. When the claimant was asked why the client did not have his glasses, she reported that the business where the claimant had taken the client did not accept Medicare. The employer then gave the claimant names of other business where the client could get glasses. Even though the claimant indicated she would make sure the client got his glasses, he did not have his glasses by August 5, 2014.

On August 4 the employer received a bill for two scheduled counseling sessions a client had not gone to. One was on June 11. The client was charged \$70 for each counseling session he did not attend. The claimant made these appointments and it was her responsibility to make sure the client attended these appointments. The claimant told the employer she had not known about the scheduled counseling sessions even though they were noted on a calendar.

On August 5 the employer discharged the claimant because she had not yet fulfilled a client's eyeglass prescription, she failed to take a client to two counseling sessions and she did not complete documentation so the employer could charge for services provided to clients.

The claimant established a claim for benefits during the week of August 10, 2014. She filed claims for the weeks ending August 16 through September 16, 2014. The Department used benefits she was entitled to receive, \$368.00 a week, to offset a previously established overpayment.

The employer's witness did not know if the employer participated at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established the claimant committed work-connected misconduct by failing to take a client to two counseling sessions she had scheduled, by failing to make sure a client received glasses that had been prescribed for the client in January, and for failing to complete documentation for billing purposes after the employer gave her a final warning for this on June 2, 2014. As of August 10, 2014 the claimant is not qualified to receive benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b. Since the August 27 determination has been reversed, the claimant has been overpaid \$1,472.00 in benefits that were used to offset a previously established overpayment.

The employer's witness did not know if the employer participated at the fact-finding interview. The issue of whether the employer will be charged \$1,472.00 or the claimant will have to pay back this amount will be remanded to the Benefits Bureau to determine.

DECISION:

The representative's August 27, 2014 (reference 02) determination is reversed. The employer discharged for reasons constituting work-connected misconduct. As of August 10, 2014 the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible.

The claimant has been overpaid \$1,472.00 in benefits she received for the weeks ending August 16 through September 16, 2014. The issue of whether the employer satisfied the participation requirement of Iowa Code § 96.3(7) is remanded to the Benefits Bureau to determine. If the employer satisfied the participation requirement, the claimant is responsible for paying back the overpayment. If the employer did not satisfy the participation requirement, the employer's account will be charged for the \$1,472.00 overpayment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can