

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA JOHNSTON
Claimant

APPEAL NO. 07A-UI-03474-S2T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

USA HEALTHCARE-URBANDALE
Employer

**OC: 12/10/06 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

USA Healthcare (employer) appealed a representative's March 27, 2007 decision (reference 03) that concluded Patricia Johnston (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 19, 2007. The claimant participated personally. The employer participated by Cindy Guyer, Acting Director of Nursing and Corporate Nurse, and Derek Wheeler, Administrator.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 28, 2002, as a full-time licensed practical nurse/charge nurse. The claimant signed that she was familiar with the employer's Policies and Procedures on January 25, 2002. The employer was decertified in 2006 and now only accepts private pay residents. In order to requalify for certification, the employer has clearly stated to employees that performance must be in accord with regulations.

On January 24, 2007, the claimant was issued a written warning for recording the administration of medicine before administering the medication, failure to post the staffing level by 11:00 a.m., properly signing off on a control log when administering a narcotic, having too many personal telephone calls, and tardiness. The employer warned the claimant that further infractions could result in her termination from employment. The employer provided extensive training to employees so that there would be no question about the correct course of action to benefit the resident's health.

One resident was prescribed antibiotics twice a day for ten days. The claimant stopped giving the antibiotics after the seventeenth dose. When extra pills were left over the claimant did not investigate the reason. She assumed the full dosage had been given. On February 19, 2007,

the claimant faxed information to a physician when she had been trained to telephone the physician's office immediately when a patient's health was at issue. The employer terminated the claimant on February 26, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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). An employer has a right to expect employees to follow instructions in the performance of their duties. The claimant disregarded the employer's right by repeatedly failing to follow instructions given to her in training. The claimant's disregard of the employer's interests is misconduct. As such, she is not eligible to receive unemployment insurance benefits.

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.

The claimant has received benefits since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's March 27, 2007 decision (reference 03) 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 has 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 \$1,137.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw/css