

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VENITA OUSLEY
Claimant

APPEAL NO: 06A-UI-11390-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCOTTISH RITE PARK INC
Employer

OC: 02/26/06 R: 02
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Scottish Rite Park, Inc. (employer) appealed an unemployment insurance decision dated November 21, 2006, reference 04, which held that Venita Ousley (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 December 13, 2006. The claimant participated in the hearing notice. The employer participated through Nicole Hammer, Human Resources. 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 employer discharged the claimant for work-related misconduct?

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 certified nurse's aide for this health care facility from March 15, 2006 through October 31, 2006 when she was discharged. She had previously received a verbal warning for leaving a catheter bag full of urine in a drawer. The claimant switched catheter bags with a resident but left the used one in a drawer instead of taking care of it. She received a written warning on October 4, 2006 for failing to provide adequate care to a resident. After the claimant's shift, a resident for whom she had provided care was found in bed with a skin tear that had not been reported to the nurse. The claimant was advised her job was in jeopardy. She was discharged for dereliction of her duties on October 30, 2006. The claimant failed to follow a resident's care plan by not putting in the resident's hearing aides. It was discovered on the following shift when the resident did not have her hearing aides and they were found where they were kept when not being used. The claimant falsified documentation by marking off on the resident's care plan that she did put in the resident's hearing aides. Falsification of documents is not tolerated and is grounds for termination.

There were two more incidents that occurred on the same day. The claimant was pushing a resident in a wheel chair while his catheter bag was dragging on the floor. This was a dignity issue for the resident since several witnesses saw it. The final incident was the claimant's failure to clean fecal matter off a Hoyer lift. This is a mechanical lift that is used to transport residents in a swing. The claimant used it to transfer a resident and never cleaned the swing afterwards. The swing was sitting in the resident's room with fecal matter all over it. When the claimant was confronted about her actions, she denied all wrongdoing and blamed it on other employees. However, she was the individual to sign off on the residents' care sheets that she had provided their care.

The claimant filed a claim for unemployment insurance benefits effective February 26, 2006 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 section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for dereliction of her duties. She had received two previous warnings for not performing her job duties and was warned her job was in jeopardy. She denies all wrongdoing but had previously taken credit for providing care for these specific residents. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and 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 unemployment insurance decision dated November 21, 2006, reference 04, 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 claimant is overpaid benefits in the amount of \$1,107.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs