

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON K GITZEN

Claimant

IOWA PHYSICIANS CLINIC MEDICAL

Employer

APPEAL NO. 12A-UI-02633-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/22/12

Claimant: Respondent (2R)

Section 96.5-2-A – Discharge for Misconduct

Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated March 8, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 2, 2012. Claimant participated. The employer participated by Peg Winkie, the billing office manager, and Susan Mickles, the human resources business partner.. The record consists of the testimony of Peg Winkie; the testimony of Susan Mickles; and the testimony of Sharon Gitzen.

ISSUES:

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a health care organization. It has offices throughout Iowa. The claimant worked at the office in Johnston, Iowa. A merger occurred and the claimant was hired with this employer on January 1, 2012. She had been employed by the organization that merged with the employer. The claimant worked in the mail room. Her last day of work was January 24, 2012. She was terminated on January 26, 2012.

Part of the claimant's job was to open mail and sort it. Personal letters are placed in an individual's mail slot. The claimant opened a letter that was personal in nature and concerned another employee. She read at least portions of the letter out loud and two other employees heard what she said. The recipient of the letter was distraught to find out that the letter had been opened and that portions of it were read out loud – loud enough that two other persons heard what was in the letter. A complaint was made to human resources.

The claimant was asked on January 24, 2012, if she had read the letter out loud and she denied it. The claimant was sent home for two days to think about it and to permit the employer to conduct a further investigation. Two individuals were able to tell the employer what was in the letter. The employer concluded that the only way these two persons were able to recite the content of the letter was if the letter had been read loudly that others could hear it.

The claimant was asked to come in on January 26, 2012. She was asked again if she read the letter and she said no. The employer then terminated the claimant for breach of confidentiality and lack of trust.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by an employee to an employer is honesty. An employer can reasonably expect that an employee will be honest when answering questions about work duties and the performance of those duties. The employer has the burden of proof to show misconduct.

The claimant worked in the billing room and part of her responsibilities was to open mail and direct it to the right person. A letter arrived and the claimant opened it. It was clearly a personal letter to one of the employees at the health clinic. The claimant admitted at the hearing that she might have read parts of it out loud while examining the letter. The letter itself or even its contents were not part of the record and so it cannot be determined when a reader might reach the conclusion that the letter was indeed personal. The most reasonable interpretation is that the claimant read the entire letter and read it out loud, loud enough for two other employees to hear. This is a serious breach of confidentiality.

The letter and the disclosure of the comments made the intended recipient distraught and he reported this to human resources. The claimant was asked about the letter and she said she did not read it out loud. She was given a second chance two days later and again said she had not read the letter out loud. In her testimony at the hearing, she said she might have read parts of it out loud. She never said this to the employer when given two separate chances to do so. The claimant simply was not truthful with her employer on two separate occasions. The failure to answer a legitimate inquiry honestly is what constitutes misconduct in this case. This is a material breach of the duty of honesty to an employer. Misconduct is established. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the Claims Section for determination.

DECISION:

The decision of the representative dated March 8, 2012, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css