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

MARGARET A BOYT
Claimant

APPEAL NO. 12A-UI-09948-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 07/22/12
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the August 15, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on September 10, 2012. Claimant participated. Employer participated through Benefits Specialist Mary Eggenburg and Human Resources Associate David Bergeon. Employer's Exhibits 1 through 4 were admitted to the record.

ISSUES:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an advanced RN practitioner and was terminated from employment on June 8, 2012. (Employer's Exhibit 4) She audited a number of courses and forged her supervisor's signature on the tuition waiver forms. (Employer's Exhibit 1) Bergeon investigated beginning May 31. Claimant first denied knowledge of the forms. Claimant's supervisor, Christopher Cooper, M.D., advised Bergeon he had never seen the forms, the signatures were not his, and he had not authorized the claimant to use his signature. (Employer's Exhibits 2 and 3)

On June 6 Bergeon interviewed claimant and her husband. University policy requires courses covered by tuition waiver to be related to the employee's job. When asked about the ballroom dancing course, claimant said she had a torn meniscus and dancing was therapeutic. She did not have medical documentation to support that claim. She then said she handed the tuition waiver forms to Dr. Cooper, he signed the forms, she spoke to him about the benefits of dance as physical therapy, and he supported her efforts. Bergeon asked her again and she said her husband signed the forms or maybe gave them to Cooper's secretary and admitted Cooper had

not allowed her to use his signature. She then said she thought tuition-free courses were a benefit of working at the university. Bergeon asked her if that was the case, why would she need to submit tuition waiver form. She said she thought it was for audited courses. Claimant's husband, a staff nurse, admitted the classes were not related to his job but they had always wanted to learn to dance. He posited that the supervisor only needed to sign the form to indicate course would not interfere with the work schedule. This was inaccurate, as forms require a supervisor's signature in the first step of the process to waive tuition and fees. He claimed his supervisor, Cindy Dawson, signed the forms and was supportive of him taking the classes. Then he admitted when there was an interim supervisor after Dawson was promoted he may have signed her name and did not have her authority. He denied getting Cooper's signature on claimant's forms. When Bergeon asked him if he signed Cooper's name, there was a long pause and he said Cooper's secretary might have signed the forms. She did not.

During the second interview on June 8, claimant's husband stated he was under the impression he had authority to sign his supervisor's name but dropped the ball and the incident was an error in judgment. He said he dropped the forms at Cooper's office and picked them up one week later (a conflict from earlier interview statement). He admitted, "I understand that [termination] would be warranted." Claimant denied getting the forms, but asked if she would have to repay tuition for each class ($850 average per class), said she did not want to discuss termination, and wanted a union representative. She had not asked for a representative at the June 6 meeting. Bergeon told her the investigation was concluded at that point. She had no further comment.

At hearing she argued there was not a requirement for there to be a connection between the course and her job, but in the June 6 interview she maintained the relationship was because the dance course was therapeutic for the torn meniscus.

Claimant received unemployment benefits after the separation on a claim with an effective date of July 22, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 writing and date numbers appear to be similar in forms' sections 1, 2, and 3 even though claimant stated she wrote nothing beyond section 1. Additionally, her inconsistent explanations and statements given to the employer render her testimony incredible. The employer has presented substantial and credible evidence that claimant falsified or knowingly participated in the falsification of tuition waiver forms. This is disqualifying misconduct. Benefits are denied.

Iowa Code § 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.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, claimant has received benefits but was not eligible for those benefits.

DECISION:

The August 15, 2012 (reference 01) decision is reversed. 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.

REMAND:

The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

_____
Dévon M. Lewis
Administrative Law Judge

_____
Decision Dated and Mailed

dml/kjw