

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY FRIEND

Claimant

APPEAL NO: 14A-UI-07536-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR VALLEY HOSPICE INC

Employer

OC: 06/29/14

Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

Cedar Valley Hospice, Inc. (employer) appealed a representative's July 16, 2014 decision (reference 01) that concluded Stacey Friend (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on August 14, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Katie Unland appeared on the employer's behalf and presented testimony from one other witness, Nathan Schutt. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for work-connected misconduct? Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

OUTCOME:

Reversed. Benefits denied. Overpayment subject to recovery.

FINDINGS OF FACT:

The claimant started working for the employer on February 4, 2013. She worked full time as a social worker. Her last day of work was June 27, 2014. The employer discharged her on that date. The stated reason for the discharge was falsification of a patient record and a time sheet.

On about June 27 the employer became aware that the claimant had made a notation on a patient record that she had attended to that patient between 9:05 a.m. and 9:30 a.m. on June 24. The employer's nurse knew that the claimant had not been with the patient during that

time as she had been doing something else with the nurse on that time. Had the employer not caught this, the visit would have been billed to Medicare, which would have been fraud. The claimant also indicated on her time sheet that she had attended to the patient on that day and time. When confronted, the claimant asserted that she had just gotten the time wrong, that she had seen the patient that afternoon. However, when asked if someone could verify she had seen the patient that afternoon, she admitted that there would not be someone who could verify the visit, even though in her assessment notes she indicated that the patient's care giver had been present in the room for part of the visit. The employer observed that the assessment was one that was due that day, and that it parroted verbatim comments made by the nurse who had visited the patient the prior day, even to the reference of the care giver adjusting the patient's oxygen. The employer determined that the claimant had not seen that patient at all on June 24.

Even though it was an isolated incident, given that it had been more than a mere mistake, that she had made the representations that there had been a visit on multiple documents, and that she would have caused there to have been a fraudulent Medicare billing, the employer determined to discharge the claimant.

The claimant established a claim for unemployment insurance benefits effective June 29, 2014. A fact-finding interview was held with a Claims representative on July 15, 2014. The employer, through Unland, participated directly in the fact-finding interview. The claimant has received unemployment insurance benefits after the separation in the amount of \$2,772.00.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's deliberate falsification of multiple documents to indicate that there had been a patient visit which did not occur shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

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.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's July 16, 2014 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 27, 2014. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account is not subject to charge. The claimant is overpaid \$2,772.00, which is subject to recovery.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs