

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CIARA RHOADES**  
Claimant

**APPEAL NO: 17A-UI-00049-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 12/04/16**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 23, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 25, 2017. The claimant participated in the hearing with boyfriend/CNA Ronald Warsfield. Brandon Kranovich, Administrator; Lisa Knights, DON; Ashley Smith, Nurse Manager; Phyllis Farrell, Unemployment Insurance Consultant for Talx; and Alyce Smolsky, Employer Representative; participated in the hearing on behalf of the employer. Employer's Exhibits 1, 2 and 3 were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time registered nurse for Care Initiatives from March 3, 2016 to December 6, 2016. She was discharged following a series of events December 3 and December 4, 2016.

On October 27, 2016, the claimant received a final written warning and three day suspension for issues that occurred October 20 and October 25, 2016. On October 20, 2016, the claimant was rude and raised her voice to a resident (Employer's Exhibit 1). On October 25, 2016, the claimant lost her composure, threw her hands in the air and made negative comments about the employer and the job (Employer's Exhibit 1).

On December 1, 2016, the claimant raised her voice to a resident in telling him to take his pills and failed to take him to a private meeting area or wait for him to finish chewing as he was eating a meal at the time (Employer's Exhibit 2). On December 3, 2016, the claimant called DON Lisa Knights four times and sent her 16 text messages in addition to contacting the nurse practitioner eight times. All of her communications regarded situations she should have known

how to handle as a RN including catheter care and nursing protocols for a seizure and high blood sugar (Employer's Exhibit 2).

On December 4, 2016, the claimant asked Ms. Knights to review her documentation from December 3, 2016. An LPN then asked Ms. Knights a question and the claimant interrupted and stated a resident had a fever of 102.2 degrees, was confused, and was in an "uproar" because he believed his roommate was trying to murder him. Ms. Knights instructed the claimant to take the resident to the dining room so she could better monitor the resident, make him feel safer and give him Tylenol for his fever. After she took the resident to the dining room he complained of shortness of breath and even though it was a routine medical situation the claimant asked Ms. Knights what to do. Over the next 30 minutes the claimant repeatedly checked the resident's temperature rather than waiting the usual two hours to see if the ibuprofen was working. She also questioned whether the resident needed to be sent to the hospital which was improper for a fever. The claimant then stated, "So I'm just supposed to let him die?" As the claimant interacted with the resident it was clear he was confused and constantly asked the claimant questions and made "off the wall statements." Instead of remaining calm and listening to his concerns the claimant debated him and became frustrated and walked away instead of realizing his dementia was causing his confusion. The resident's family came to visit and questioned his confusion and the claimant's capability.

On December 5, 2016, the employer reviewed the claimant's documentation and observed it did not accurately reflect the details of what happened December 4, 2016. She did not include the resident's low oxygen level or the interventions done to try to help his various conditions and her notes were general and vague. After evaluating the claimant's performance, the employer terminated her employment December 6, 2016.

The claimant has claimed and received unemployment insurance benefits in the amount of \$2,484.00 for the eight weeks ending January 28, 2017.

The employer personally participated in the fact-finding interview through the statements of Unemployment Insurance Consultant Phyllis Farrell. The employer also submitted written documentation prior to the fact-finding interview.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was a registered nurse but did not display the knowledge necessary to be left alone with residents as she contacted the DON and nurse practitioner 28 times December 3, 2016, to ask how to handle very routine medical situations. Additionally, she did not understand how to treat a resident's fever and was observed interacting inappropriately with the resident, who suffered from dementia, on December 4, 2016.

The claimant was trained to treat the situations presented to her December 3 and 4, 2016, but failed to utilize her training. Even though the claimant attributes her actions to mental health issues, she had a responsibility to seek treatment so she could adequately perform the essential functions of her job.

Under these circumstances, the administrative law judge must conclude the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness

with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

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 section 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.

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. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Unemployment Insurance Consultant Phyllis Ferrell. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of \$2,484.00 for the eight weeks ending January 28, 2017.

**DECISION:**

The December 23, 2016, reference 01, decision is reversed. The 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. The claimant has received benefits but was not eligible for those benefits. The employer personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$2,484.00 for the eight weeks ending January 28, 2017.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs