

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE K WRIGHT
Claimant

APPEAL NO. 07A-UI-02452-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREENE COUNTY MEDICAL CENTER
Employer

**OC: 02/04/07 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 95.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Greene County Medical Center (GCMC), filed an appeal from a decision dated March 1, 2007, reference 01. The decision allowed benefits to the claimant, Denise Wright. After due notice was issued a hearing was held by telephone conference call on March 27, 2007. The claimant participated on her own behalf. The employer participated by Director of Nursing Cindy Carstens, Administrator Karen Bossard and Human Resources Director Maggi Abernathy. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Denise Wright was employed by GCMC from June 1, 1994 until January 31, 2007. She was a full-time registered nurse. The claimant began on the progressive disciplinary process July 3, 2000, when she received a verbal warning regarding complaints of rudeness. From that point on the same problem was discussed in her evaluations, along with mention of her "attitude," and lack of cooperation with other staff.

On August 31, 2006, she received a written warning regarding rudeness and a final written warning on January 9, 2007, along with a three-day suspension, for the same problem. On January 29, 2007, Administrator Karen Bossard was notified by a nurses' aide the claimant had been rude to the patient in room 169. Ms. Bossard conducted an interview with the complainant and also with the patient. The patient was visibly upset, cuing and agitated, but did not want to discuss the incident other than to say the nurse had been demanding and rude.

The other witness stated the claimant along with herself and another aide, had moved the patient to a commode and then were going to move her to a chair. The patient requested to be put back to bed and Ms. Wright told her that she should try to sit in the chair because when she went to a nursing home she was not going to be allowed to stay in bed all day.

The administrator referred the matter to DON Cindy Carstens on January 31, 2007. Because of the history of prior warnings and complaints, especially the final written warning, the decision was made to discharge the claimant. She was notified by the DON that day.

Denise Wright has received unemployment benefits since filing a claim with an effective date of February 4, 2007.

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.

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 claimant had been advised her job was in jeopardy as a result of continued complaints from staff, visitors and patients that she was rude. In spite of the progressive warnings and evaluations about this subject, the claimant did not modify her behavior. As far as the final incident, the claimant maintained she was trying to do the patient a service by letting her know she had better build up her strength to sit in the chair because she would have to do that when she went to the nursing home. However, the administrative law judge cannot perceive how that comment in any way helped the claimant perform her required duties in regard to that patient, or

how the patient would have been encouraged by such information or benefited from it in any way. To the contrary it appeared to have caused the patient considerable distress. This is conduct not in the best interests of the employer and the claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of March 1, 2007, reference 01, is reversed. Denise Wright is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,765.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs