

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NICOLE NUSS

Claimant

APPEAL NO. 14A-UI-02282-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINGMAN HOSPITAL INC

Employer

OC: 01/05/14

Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Kingman Hospital, Inc. (employer) appealed an unemployment insurance decision dated February 18, 2014, (reference 02), which held that Nicole Nuss (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 24, 2014. The claimant participated in the hearing. The employer participated through Jason Hembree, Human Resources Generalist; Michael Oursler, Director; and Thomas Kuiper, Employer Representative. Employer's Exhibits One through Four were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time medical technologist from March 16, 2013, through January 7, 2014, when she was discharged for repeated insubordination and failure to follow the employer's directives. The final incident occurred on January 6, 2014, when she left the blood bank without telling co-workers and was eating food as she returned into the work area. Both actions are policy violations and she had been previously warned about similar conduct. A warning was issued on November 7, 2013, for accepting calibration errors and a warning was issued on October 7, 2013, for leaving work early, taking too many personal phone calls, using her cell phone while working, taking too many breaks, and starting her shift early without permission. Other warnings were issued on September 27, August 14, August 1, July 31, and May 20, 2013.

The claimant filed a claim for unemployment insurance benefits effective January 5, 2014, and has received benefits after the separation from employment in the amount of \$3,792.00. The employer did not participate in the fact-finding interview but did not receive proper notice because it was not sent to the employer representative who handles these cases for the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on January 7, 2014, for repeated insubordination and a failure to follow directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant had established a consistent pattern of disregarding the employer policies and/or directives. Her conduct 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant was overpaid benefits in the amount of \$3,792.00. Whether the amount overpaid should be recovered from the claimant and charged to the employer is remanded to the Agency.

DECISION:

The unemployment insurance decision dated February 18, 2014, (reference 02), is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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 is overpaid benefits in the amount of \$3,792.00. The case is remanded for a determination on the potential waiver of the overpayment and the employer's chargeability.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs