

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURIE A CRAMBERG**

Claimant

**APPEAL NO. 12A-UI-06628-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROSEBUSH GARDENS ASSISTED LIVING**

Employer

**OC: 01/01/12**

**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Rosebush Gardens Assisted Living filed a timely appeal from a representative's decision dated June 1, 2012, reference 04, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a hearing was held in Burlington, Iowa, on July 23, 2012. The claimant participated. Participating as a witness was Mr. Ron Eiben. The employer participated by Ms. Michelle Van Dolah, administrator; Ms. Marianne Cutkomp, RN/health care coordinator; Ms. Roberta Ferguson, health activity coordinator; and Ms. Rebecca Brooks, personal care assistant.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Laurie Cramberg was most recently employed by Rosebush Gardens Assisted Living from January 26, 2012, until May 14, 2012, when she was discharged from employment. Ms. Cramberg was employed as a part-time personal care assistant and was paid by the hour. Her immediate supervisor was Marianne Cutkomp.

A decision was made to terminate Ms. Cramberg based upon reports from employees who had worked the previous night and had observed Ms. Cramberg slurring her words and having difficulty functioning because of the use of prescription painkillers and sedatives. When questioned, Ms. Cramberg admitted that she had been taking valium and percocet because of recent back pain. The claimant indicated that she had been previously prescribed the sedative and painkiller by her physician for a different injury.

The employer concluded, based upon reports made by two separate individuals who had worked with or encountered Ms. Cramberg, that the claimant was impaired to the extent that she might be jeopardizing the safety and/or well-being of residents under her care. The

employer noted that Ms. Cramberg had not reported the use of prescription medications that could alter her physical or mental abilities to perform her job functions as required by established company policy. The policy is contained in the facility's handbook. Ms. Cramberg received a copy of the handbook and acknowledged its receipt and its contents. In discharging the claimant, the employer made reference to its probationary employee policy, which allows the employer to separate individuals who they determine are not well-suited within 90 to 100 days after their hire date. All company employees are expected to adhere to the employer's requirement that they notify their supervisor of the use of prescription drugs that may affect their physical or mental abilities to perform their jobs. Employees are subject to discharge for violation of the policy, whether they are probationary employees or long-term workers.

It is Ms. Cramberg's position that although she received a copy of the handbook and acknowledged it, she was unaware of the requirement to report the use of prescription medications that could affect her abilities. It is the claimant's further position that she believes that she provided quality care to residents on the night in question and was unaware that she was slurring her speech or that her motor skills had been impaired.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on intentional or culpable acts on the part of an employee.

In this matter, the evidence in the record establishes that Rosebush Gardens Assisted Living's policy requires employees who are taking prescription medications that might affect their mental or physical abilities when dealing with residents to report the taking of the medications to their supervisors so that proper management decisions can be made regarding whether the employee is able to work or what accommodations need to be made.

In this matter, the evidence establishes that Ms. Cramberg was provided a copy of the company's handbook and acknowledged its receipt and contents. The evidence also establishes that Ms. Cramberg reported to work visibly under the influence of prescription medications that substantially curtailed her ability to adequately perform the physical and mental duties of her job in caring for facility residents. The claimant does not deny taking prescription medications and does not deny failing to report the taking of the medications to her supervisor.

The evidence in the record establishes that employees who violate the rule are subject to discharge whether they are new, probationary employees or whether they are seasoned, long-term employees.

The claimant, in this case, was not discharged because she did not have the abilities as a probationary employee, but was discharged for a violation of an established rule the claimant knew or should have known of. The administrative law judge thus concludes that the employer has sustained its burden of proof in establishing that Ms. Cramberg's discharge took place under disqualifying conditions.

Iowa Code section 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.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

**DECISION:**

The representative's decision dated June 1, 2012, reference 04, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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