

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN J KUEHL

Claimant

APPEAL NO. 07A-UI-07836-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITY HEALTH SYSTEM

Employer

**OC: 07/15/07 R: 04
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Unity Health System (employer) appealed a representative's August 10, 2007 decision (reference 01) that concluded Susan Kuehl (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 29, 2007. The claimant participated personally. The employer participated by Delores Stecher, Human Resources Director; Pam Askew, In Patient Care Director and Interim Vice President of Patient Services; and Dennis Green, Director of Pharmacy. The employer offered one exhibit, which was marked for identification as Exhibit One. Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 29, 2007, as a full-time registered nurse. The employer uses the PYXIS system to track prescription drugs. For a nurse to obtain medicine for a patient, she must request the drug from the system. The system requires the nurse's fingerprint for release of the medication. The nurse must also verify the quantity of medicine in the system and the amount she removes. Even though the employer was using the system, the pharmacy was not completing its oversight duties. At the end of June 2007, the pharmacy had a new director.

On July 11, 2007, the employer discovered that the claimant requested narcotics from the PYXIS system for a patient who was not prescribed the narcotics. The employer referred the issue to the new director. The employer and the pharmacy director investigated. They found 14 incidents where the claimant requested narcotics from the PYXIS system and tablets were missing. Approximately 140 tablets of percocet, lortab, or vicodin were missing. The employer inquired whether the PYXIS system could have been in error. The company who makes the

system has no documentation of any errors of this nature. The employer terminated the claimant on July 18, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by failing to protect the employer's assets. The claimant failed to secure narcotics or count and report them correctly. The claimant's disregard of the employer's interests is misconduct. As such, she is not eligible to receive unemployment insurance benefits.

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 benefits since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's August 10, 2007 decision (reference 01) 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 has 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 \$1,080.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw