

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANA L ROY
Claimant

APPEAL NO. 13A-UI-08465-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 06/23/13
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated July 18, 2013, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on August 26, 2013, by telephone conference call. The claimant participated personally. The employer participated by David Mollenhoff, human resources coordinator, and Myra Walters-Dorf, assistant director of nursing. Alyce Smolsky served as hearing representative for the employer. The record consists of the testimony of David Mollenhoff; the testimony of Myra Walters-Dorf; the testimony of Diana Roy; and Employer's Exhibits 1-7.

ISSUES:

Whether the claimant was discharged for misconduct; and
Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact: The employer is a long term care and skilled nursing facility known as Ravenwood. Ravenwood is located in Waterloo, Iowa. The claimant was hired on June 29, 2011. She was a full-time licensed practical nurse. Her last day of work was June 17, 2013. She was terminated on June 18, 2013.

The incident that led to the claimant's termination occurred on June 7, 2013. The claimant was terminated because she failed to complete documentation on a new resident that had just been admitted. Specifically the claimant did not prepare an admission assessment, shift entry and supplemental forms. (Exhibit 1) The claimant had been given a verbal coaching on April 29, 2013, on her failure to do necessary paperwork. (Exhibit 2) A final warning was given on February 21, 2013, when the claimant failed to properly count narcotics. (Exhibit 3) A final warning was given for failure to assess a resident's bruise and skin tears and prepare the necessary documentation. (Exhibit 4) A written warning was done on February 2, 2012, for

failure to follow proper medication administration. (Exhibit 5) A verbal warning was given on October 24, 2011, for failure to make complete admission assessment on a resident with bruising. (Exhibit 6)

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions constituting a material breach of the worker's duty to the employer. An employer can reasonably expect that an employee will follow work rules concerning the performance of that employee's job. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The greater weight of the evidence shows wanton carelessness on the part of the claimant when doing necessary documentations required by the employer. In particular, there is a recurring pattern of her failure to do assessments and prepare the paperwork associated with those assessments. The employer provides medical care to vulnerable individuals and has a material interest in making sure that a resident's needs are properly assessed and treated. The claimant breached her duty to the employer by repeatedly failing to properly assess and document residents. This is misconduct. Benefits are denied.

The next issue is overpayment of benefits.

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 overpayment issue is remanded to the claims section for determination.

DECISION:

The decision of the representative dated July 18, 2013, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefits amount, provided she is otherwise eligible. The overpayment issue is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs