

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MISTY HEINOLD**

Claimant

**APPEAL NO: 10A-UI-10125-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**

**DUBUQUE NURSING & REHAB CTR**

Employer

**OC: 06/13/10**

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

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

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Care Initiatives (employer) appealed an unemployment insurance decision dated July 7, 2010, reference 01, which held that Misty Heinold (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 September 14, 2010. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Mike Terrill, Administrator; Amanda Bradac, Director of Nursing; Sarah Reiff, Assistant Director of Nursing; Julie Murfeld, Registered Nurse/Charge Nurse; and Lynn Corbeil, Employer Representative. Employer's Exhibits One through Four were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**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 certified nurse's aide from September 18, 2008 through June 9, 2010 when she was discharged for repeated insubordination and inappropriate behavior. She received a final written warning on November 13, 2009 after she made fun of a co-worker. The claimant dressed up for Halloween in an outfit intended to look like her co-worker and she spoke and acted like the co-worker. She had told her co-employees she was going to do this prior to that day. The claimant wore a blond wig, put balloons in her shirt to represent her breasts and said, "I have a question, I have a question" which is something this particular co-worker has been known to say. The claimant posted pictures and comments on a social networking site. Her actions resulted in the co-worker crying and the claimant was creating a hostile work environment. After investigating the complaints, the employer suspended the claimant for three days and issued her a final

warning advising her that she had to communicate and behave with respect towards staff, residents, families and visitors.

The claimant reported to work at 4:00 p.m. on June 9, 2010 and the charge nurse, Julie Murfeld, told her that she needed to work on B wing since there were already two CNA's on C wing. Approximately a half hour later, RN Murfeld was passing out meds in B wing and saw that there were numerous call lights lit, which meant the residents were requesting help. RN Murfeld realized she had not seen the claimant on B wing so she went to look for her. After searching for the claimant for a half hour, RN Murfeld found her on C wing talking to a resident and the resident's family member. RN Murfeld told the claimant she needed to answer the call lights on B wing and the claimant gave her a dirty look. After another ten minutes, the claimant had not returned to B wing so RN Murfeld went back to C wing and the claimant had not left the room where she had been previously found. RN Murfeld told the claimant she really needed help and the claimant said she was busy right now.

RN Murfeld told Assistant Director of Nursing Sarah Reiff that the claimant refused to help. ADON Reiff also noticed there were call lights going off on B wing and she saw the claimant return from C wing to B wing. She told the claimant she needed to be respectful to the charge nurse and the claimant said that was fine, that she would just stay down on B wing and she started to walk away. ADON Reiff told her she was not done talking to her and the claimant turned around. ADON Reiff again told her she needed to be respectful to the charge nurse and the claimant said she did not mean it for ADON Reiff but meant it for Julie (RN Murfeld).

Later on, RN Murfeld noticed that a resident on C wing needed to go to the restroom before she went to the dining room. Both CNA's on C wing were helping others and the claimant had all the residents on B wing in the dining room, so RN Murfeld asked the claimant to help that resident. The claimant refused by stating the resident was on C wing and she was supposed to be helping on B wing. RN Murfeld again reported the claimant's actions to the employer. The employer subsequently discharged her after reviewing her record.

The claimant filed a claim for unemployment insurance benefits effective June 13, 2010 and has received benefits after the separation from employment.

#### **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.

Iowa Code § 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on June 9, 2010 for repeated insubordination and inappropriate behavior. She was on a final warning but still opted to act in a disrespectful manner towards the charge nurse. Her actions were becoming detrimental to the employer, the staff and the residents. The claimant's 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.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated July 7, 2010, 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 been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css