

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KLINT J REQUIST
Claimant

APPEAL NO. 07A-UI-08346-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**OC: 08/05/07 R: 02
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 30, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 17, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Eddie Brown participated in the hearing on behalf of the employer with a witness, Cindy Neller. Exhibits One through Six were admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as MRI technician from July 30, 2001, to August 3, 2007. Cindy Neller was his immediate supervisor.

The claimant was warned in writing for unprofessional conduct on February 26, 2007, after an incident on February 21, 2007. The incident involved an extremely claustrophobic patient who was anxious about the MRI machine. He requested sedation before he got into the MRI room. The office manager called and asked the claimant about the request. He responded that sedation was given in the MRI room and it would be stupid to do it before because they would have to move the patient from a gurney to the MRI table. He asked the office manager if she thought it was ridiculous. When the office manager replied that his attitude was ridiculous, the claimant responded that they would sedate the patient and put him on the floor or in a chair and he would just add it on. The office manager told the claimant that the patient was there at the desk and they would discuss it later. The claimant was speaking loud enough that the patient overheard his comments. The patient commented to the office manager that the claimant was a jerk.

On July 30, 2007, two other MRI technicians were having a difficult time getting a proper MRI scan of a patient. They had tried three times without success. The claimant came in to assist the other technicians because there was another patient with a serious injury waiting for an MRI. They had the patient remove her eye makeup because the metallic elements can affect an MRI, but the problems continued. The claimant insisted the patient was moving, which the patient adamantly denied. They tried the MRI again but it still did not turn out. When the patient tried to sit up, the claimant grabbed the patient's arm and told her that she could not get up. This caused the patient to start crying. She insisted that the claimant not come into the room again. The claimant stayed outside for the remainder of the procedure.

The employer received a complaint from the patient about how the claimant treated her. Neller interviewed the patient and took statements from other two technicians. The employer discharged the claimant on August 3, 2007, for unprofessional conduct and physically grabbing a patient.

The claimant filed for and received a total of \$1,388.00 in unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. He had been warned previously about similar conduct. He physically grabbed a patient in an aggressive manner. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,388.00 in benefits.

DECISION:

The unemployment insurance decision dated August 30, 2007, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,388.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs