

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an optical manager full time beginning September 4, 2001 through September 1, 2005, when he was discharged.

The claimant was discharged because he changed the prescription for a customer's glasses without getting the written permission or a new prescription from the doctor. The employer's handbook and state law require that a doctor issue a prescription for glasses. The employer's handbook prohibits employees from changing a customer's prescription unless they receive written authorization from a doctor. Dr. Patera denied giving the claimant permission to change the customer's glasses prescription. The claimant admitted that he had changed the customer's prescription, but he alleges that Dr. Patera gave him verbal permission to make the change. The claimant had no previous disciplinary history for any similar conduct or behavior. The claimant had been given a copy of the company handbook, which prohibited changing prescriptions without written approval from a doctor. Dr. Patera's routine is that if a patient complains about problems with the prescription, then a new appointment is scheduled for the patient to be seen by the doctor. Dr. Patera denies giving the claimant verbal authorization to change the customer's prescription. At hearing the claimant admitted that he knew changes to prescriptions should be in writing.

The claimant has claimed and received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant admitted that he knew he had to have written permission from the doctor to change a customer's glasses prescription. The claimant did not receive written permission from the doctor to change the customer's prescriptions in contravention of both the employer's company policy and state law. The claimant's changing of a customer's prescription without proper permission and written authorization constitutes disqualifying misconduct. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The September 19, 2005, reference 03, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,242.00.

tkh/kjw