

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BONNIE M NELSON

Claimant

APPEAL NO. 06A-UI-10929-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE SYSTEMS INC

Employer

**OC: 10/15/06 R: 02
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Comprehensive Systems, Inc. (CSI), filed an appeal from a decision dated November 6, 2006, reference 01. The decision allowed benefits to the claimant, 1. After due notice was issued a hearing was held by telephone conference call on November 29, 2006. The claimant participated on her own behalf. The employer participated by Unit Manager Linda Zappa, Program Director Sheryl Heyenga, QMRP Tammy Litterer, Director of Personnel Cheryl Pringle.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Bonnie Nelson was employed by CSI from January 16 until September 28, 2006. She was a part-time direct support staff member for consumers with mental retardation. During the course of her employment, she received an evaluation in May 2006 which told her she had to improve her performance in following policies and procedures, and not to engage in inappropriate conversations at work.

She received a verbal warning July 17, 2006, for being no-call/no-show to work. A final written warning and two-day suspension was issued on August 15, 2006, for insubordination with a supervisor and excessive absenteeism.

On September 24, 2006, the claimant was reported to have been questioning another staff member, in the presence of other consumers, as to why a particular consumer needed to use the shower stool. This is a violation of the privacy provisions of the consumer as well as inappropriate comments and criticism of procedures in front of consumers. Ms. Nelson also initially refused to help the other staff member with the transfer, but eventually did help.

The claimant had also violated the privacy provisions by saying very loudly in the cafeteria that a certain consumer should not be allowed in the kitchen because she would “eat all the potatoes.” She had also failed to follow the scheduled activities on September 24, 2006, maintaining the schedule had been “lost” but it was sitting on the bookshelf where Ms. Zappa had left it.

The complaints were investigated by interviewing several staff members who all corroborated the report. Ms. Nelson’s next scheduled day of work was September 28, 2006, at which time she was discharged.

Bonnie Nelson has received unemployment benefits since filing a claim with an effective date of October 15, 2006.

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.

The claimant had been advised her job was in jeopardy as a result of her poor work performance and failure to adhere to the employer’s policies and procedures as far as consumer rights and privacy were concerned. Her comments in front of other consumers about the necessity for one individual to use the shower stool and the other staff member’s request for help were in direct violation of the employer’s policies. The same is true of the comment in the cafeteria about the consumer who would eat all the potatoes. It is insubordination to refuse to

follow the scheduled activities for the consumers. All of this is conduct not in the best interests of the employer and the claimant is disqualified.

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 unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 6, 2006, reference 01, is reversed. Bonnie Nelson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$882.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw