

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANA M GENTILE

Claimant

APPEAL NO. 13A-UI-08135-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GYP SUM CREEK HEALTHCARE INC

Employer

OC: 06/09/13

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Gypsum Creek Healthcare, Inc. (Gypsum Creek) filed an appeal from a decision dated July 5, 2013, reference 02. The decision allowed benefits to the claimant, Shana Gentile. After due notice was issued a hearing was held by telephone conference call on August 16, 2013. The claimant participated on her own behalf. The employer participated by Administrator Brett Asy and Director of Nursing (DON) Mandy Gascho.

ISSUE:

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

FINDINGS OF FACT:

Shana Gentile was employed by Gypsum Creek from September 1, 2012 until June 17, 2013 as a full-time licensed practical nurse. She had been trained on properly handling of narcotics in her schooling as well as in services provided by the employer. Narcotics are to be counted by both the outgoing and incoming charge nurses at the end of each shift. The count is recorded on the med sheet. At the end of each shift the count is made again and the number of narcotics on hand at the beginning of the shift, minus the number of narcotics dispensed during the shift, should comply.

On February 16, 2013, Ms. Gentile received a written warning for leaving a full medication dose in a resident's room. On February 20, 2013, she received another written warning for not counting the narcotics on hand with the oncoming nurse before she left the building. On May 10, 2013, she signed off that she had counted the narcotics but in fact had not.

The last incident was discovered by the DON during an inspection by the state of Iowa on May 20, 2013. Ms. Gentile was suspended May 29, 2013, pending an investigation. When she was interviewed the claimant acknowledged she had not counted the meds but signed off anyway.

On June 17, 2013, the claimant was discharged for violating policy and state law on the handling of and accounting for controlled substances. Such violations can lead to fines for the employer or loss of license.

Shana Gentile has received unemployment benefits since filing a claim with an effective date of June 9, 2013.

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 was fully aware of the procedure to be followed in counting and administering narcotics. She failed to follow these requirements on three occasions in less than three months. Her conduct not only jeopardized the employer's license and exposed it to punitive fines, it jeopardized residents, other staff and visitors by leaving drugs in a resident's room and not properly accounting for the whereabouts of other narcotics with proper counting and documents. The employer has the obligation to provide a safe and medically sound care environment for all employees and clients. The claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits, even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to

award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

DECISION:

The representative's decision of July 5, 2013, reference 02, is reversed. Shana Gentile is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs