

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONISHA HOSKINS
Claimant

APPEAL NO. 07A-UI-06593-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EMPLOYMENT SERVICES
Employer

OC: 05-20-07 R: 04
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 20, 2007, reference 04, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 5, 2007. The claimant participated in the hearing. Bill Rose, Human Resources Director, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as full-time CNA for Heartland Employment Services from August 2, 2006 to May 21, 2007. On September 14, 2006, the claimant received a written warning for refusing to do final rounds with the oncoming shift and because residents were found “extremely wet” and uncared for and some trash was not cleaned up (Employer’s Exhibit One). On October 23, 2006, the claimant was disrespectful to a resident and continually talked about the resident and situation in front of many other residents even after other employees told her to stop (Employer’s Exhibit One). On November 27, 2006, the claimant received a written warning for failing to toilet a resident November 24, 2006, after that resident fell out of his wheelchair waiting for her to help him (Employer’s Exhibit One). On December 3, 2007, the claimant received a written warning for refusing to feed a specific resident because she “had trouble” with him before and stated, “I’m not going to feed him” (Employer’s Exhibit One). The DON told her she would have to write her up for refusing to do what she was asked and the claimant said, “I don’t care” (Employer’s Exhibit One). The claimant was also placed on a corrective action at that time stating she “will learn to work better with co-workers. Will follow all direction and find better ways to deal with conflict rather than confrontation” (Employer’s Exhibit One). On April 13, 2007, the claimant received a written warning for refusing to do peri-care and saying she had changed patients when she had not; using her cell phone during work hours; not being a team player; and walking away from a patient in a questionably acute situation (Employer’s

Exhibit One). A Concern Form for Employees was completed listing the first two items above as well as complaints that she went in the sunroom or empty patient rooms and sat and would not help toilet patients; walked away from a patient choking on phlegm; failed to show initiative in doing anything extra for the patients or explaining what she was doing to them as she was doing it; would only feed one resident at dinner; was afraid of the residents and would not go near a certain one and “barely helped” with another; and went on breaks without notifying the nurse. On May 18, 2007, the claimant was suspended pending investigation after she argued with the charge nurse and her supervisor and told them they should not try to tell her what to do because she knows her job and “got in their face.” Her supervisor felt she was unable to redirect her due to the claimant being hostile (Employer’s Exhibit One). The employer terminated the claimant’s employment May 21, 2007.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). While the claimant denies the employer's allegations and attributes them to the fact that other employees "didn't like her," the administrative law judge found the employer's testimony credible. The claimant not only did not care for the residents in a respectful and responsible manner, she also failed to treat her co-workers and supervisors with respect and consistently failed to follow the rules of the facility or perform her assigned tasks. The claimant received at least six written warnings and a corrective action but still her negative behavior persisted. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). 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 June 20, 2007, reference 04, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times the weekly benefit amount,

provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$2,076.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css