

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURIE J LISKA
Claimant

APPEAL NO. 08A-UI-06796-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY REGIONAL MEDICAL CENTER
Employer

**OC: 06/22/08 R: 01
Claimant: Respondent (2-R)**

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

STATEMENT OF THE CASE:

The employer, Trinity Regional Medical Center (Trinity), filed an appeal from a decision dated July 17, 2008, reference 01. The decision allowed benefits to the claimant, Laurie Liska. After due notice was issued, a hearing was held by telephone conference call on August 11, 2008. The claimant participated on her own behalf. The employer participated by Director of Behavioral Services Deb Albrect and Manager of Human Resources Ted Vaughn

ISSUE:

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

FINDINGS OF FACT:

Laurie Liska was employed by Trinity from March 2, 1992 until June 24, 2008 as a full-time supervisor of the chemical dependency unit. She received a written warning and one-day suspension on October 5, 2007, for failing to have patient records up to date, both her own clients and the clients of her subordinates. An action plan was developed and the claimant was to make sure the records were up to date by reviewing them every two weeks and to create a worksheet to monitor the files to assure the proper documents were provided.

The claimant met regularly with her supervisor, Director of Behavioral Services Deb Albrect, to review the progress. She had not developed the monitoring worksheet as required but always stated the records were up to date. However, this was not the case. At least one counselor was more than eight months behind on some documents and six to eight weeks behind on progress notes and other matters. It was not until March 2008 the claimant went to Ms. Albrect about the problem because she had not been monitoring them bi-weekly as required.

The counselor in question was discharged in April 2008 and the claimant was advised by her supervisor her attendance needed to improve and she was to monitor the files more frequently. She still did not do this and it was of concern to the employer because the time the counselors

charged to the program had been reimbursed. If the employer was not able to provide the necessary documentation to support the charges, the money would have to be refunded.

The claimant was counseled again on June 20, 2008, about her attendance and also about the status of the patient charts. Ms. Albrecht said she was going to consult with Director of Human Resources Ted Vaughn about the claimant's status and Ms. Liska stated if she was going to be terminated she needed some notice so she could make sure her files were up to date. She was aware at that time her files were deficient.

Ms. Liska stated she had spent a good deal of time trying to update the files of the counselor who had been discharged. She asked Ms. Albrecht for some help and was referred to another staff member who did provide help in some areas but was unable to take over some of the claimant's group sessions. However, Ms. Liska did not go to her supervisor and specifically ask for help with the group sessions. Ms. Albrecht did the scheduling for the departments in question and could have made arrangements for staff members to be available to do the group sessions.

A review of the claimant's performance, patient records and her failure to supervise her subordinates was done by Mr. Vaughn and Ms. Albrecht. The decision was made to discharge and the claimant was notified on June 24, 2008.

Laurie Liska has received unemployment benefits since filing a claim with an effective date of June 22, 2008.

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 advised of what she needed to do in order to perform her job duties as a supervisor and a counselor. Adequate time was available in any work week for her to do her own charting, which she did not do, and to monitor the charts of her subordinates, which she also did not do. Although she consistently told her supervisor the files were up to date this was a deliberate misrepresentation. The counselor who was discharged was behind at least eight months for some documentation but this was not mentioned to Ms. Albrecht until March 2008. This alone deprived the employer of the opportunity to correct the problem in a more timely manner.

In addition, the claimant was aware her own files were not up to date as she made specific mention of the need to update them at the counseling session on June 20, 2008. She also made the comment at that time that she guessed she "sucked as a supervisor." The record establishes the claimant was discharged for refusal to perform the essential functions of her job by keeping her own files and the files of her subordinates up to date. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this states pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of July 17, 2008, reference 01, is reversed. Laurie Liska is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css