

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA A PERKINS

Claimant

APPEAL NO. 10A-UI-15387-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND HOME CARE INC

Employer

OC: 10/03/10

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Heartland Home Care (Heartland), filed an appeal from a decision dated October 27, 2010, reference 01. The decision allowed benefits to the claimant, Lisa Perkins. After due notice was issued a hearing was held by telephone conference call on December 20, 2010. The claimant participated on her own behalf. The employer participated by Case Manager Brenda Wilhelm.

ISSUE:

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

FINDINGS OF FACT:

Lisa Perkins was employed by Heartland from April 14, 2008 until October 4, 2010 as a full-time registered nurse. She had been verbally counseled about inaccurate mileage reimbursement forms and then received a final written warning June 23, 2010. The warning advised her that her job was in jeopardy if there were any further problems with the mileage claims.

The employer's policy requires the mileage to be based on the shortest distance between the employee's home and the home of the client. No side trips are allowed and the claimant's job duties would not entail her doing any shopping on the part of the client or taking the client anywhere. In addition the employer does not pay the first 15 miles to the destination or the last 15 miles from the destination.

Ms. Perkins submitted her claims to the Oskaloosa office of Heartland and the personnel there felt some of the claims were questionable. On September 24, 2010, the Oskaloosa office forwarded mileage reimbursement forms to Case Manager Brenda Wilhelm. Ms. Perkins had claimed mileage to the same client's home for September 19, 22 and 24, 2010. But the phone "log in" system showed she had actually been there on September 19, 20 and 24, 2010. In addition, the number of miles claimed to the same destination varied from day to day, 110, 117 and 112 miles for the three trips.

The employer used the on-line web site MapQuest to calculate the actual mileage from Ms. Perkins' home to that of the client and it showed 108 miles. Ms. Wilhelm has, in the past, verified the accuracy of MapQuest calculations by driving the same route and comparing her odometer reading to that of MapQuest's mileage report and found it accurate.

Ms. Wilhelm then reviewed other mileage claims made by the claimant after the June 23, 2010, warning and found discrepancies amounting to several hundred dollars in overpayment. Ms. Perkins had combined several trips to the homes of two clients, representing three trips total, so that only 30 miles were deducted from the total under the company policy, rather than 90 miles.

The case manager reviewed the claimant's reimbursement claims on September 24, 2010, then on Monday, September 27, 2010, conferred with the administrator and the CEO about the situation. The decision was made to discharge the claimant but she was on vacation until October 4, 2010. When she returned to work she met with Ms. Wilhelm who discharged her.

The claimant admitted she was "guessing" many times on the amount of mileage she would report and on more than one occasion made personal side trips to do shopping without deducting those extra miles from the total. She did acknowledge the written warning had advised her that her job was in jeopardy but still did not make a more diligent effort to track her mileage using her odometer reading for a precise total.

Lisa Perkins has received unemployment benefits since filing a claim with an effective date of October 3, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 inaccurate mileage reimbursement claims. The employer had talked to her about what was expected, what the policies were regarding what would be reimbursed, and suggested methods for keeping a more accurate total. In spite of this the claimant continued to “guess” what her actual mileage was, to combine trips to clients’ homes so that the 30-mile deduction would not come into effect for each trip and to include personal side trips in her mileage.

Ms. Perkins could not give a reasonable explanation for failing to keep more accurate information and for continuing to include personal side trips except that she “forgot.” While it may be reasonable to “forget” a time or two the total number of egregious errors on the claimant’s paperwork goes beyond that to willful misrepresentation or negligence of such a high degree as to constitute willful misconduct. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code § 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 state 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 October 27, 2010, reference 01, is reversed. Lisa Perkins is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs