

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA SUNKLE**

Claimant

**APPEAL NO: 10A-UI-12777-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**

Employer

**OC: 07-25-10**

**Claimant: Respondent (2R)**

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 September 3, 2010, reference 01, 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 October 27, 2010. The claimant participated in the hearing. Jalissa Simmons, Administrator and Josh Burrows, Employer Representative, 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 a full-time personal service attendant for assisted living from June 16, 2000 to July 27, 2010. She was working July 23, 2010, when an employee called in and voluntarily quit. The claimant was unable to find a replacement and the employer told her to try to get another employee to work that night. The employer said if the claimant was unable to find someone to work she should contact the employer again and it could probably offer more money to the replacement. When the employer arrived at work July 26, 2010, she saw that the claimant had paid herself double time for working July 23, 2010, and paid another attendant time and a half for working July 24, 2010. They both worked their usual shifts but the claimant authorized their overtime without talking to the employer. The claimant does not have the authority to approve overtime pay. The divisional manager from the corporate office visited the work site July 27, 2010, for other reasons but the employer mentioned what happened. CNA's are not paid time and a half even if they work overtime. The claimant thought the employer paid double for overtime but could not explain why she only gave the other employee time and a half. The employer decided to terminate the claimant's employment because she was already on a final written warning. The claimant received a verbal warning July 27, 2005, for showing a lack of respect for a resident's privacy. A written warning was issued to her January 30, 2006, for showing a lack of respect towards authority. A final written warning was issued to her June 24,

2008, for arguing with a supervisor. She received a second final written warning January 5, 2010, for improperly cleaning the tenant's apartments.

The claimant has claimed and received benefits since her 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 claimant was discharged for a final incident of paying herself double for working overtime July 23, 2010. Not only did she fail to contact the employer and find out if she and the other employee would receive more pay if they took the shifts the employer was trying to find replacement workers for, but she paid herself double time while only paying the other employee time and a half. While the claimant stated she thought she would be paid double time for working overtime she could not explain why she paid the other employee time and a half. Under these circumstances, 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). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The September 3, 2010, reference 01, 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 her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs