IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHELE SCHULTZ
Claimant

WAVERLY HEALTH CENTER
Employer

APPEAL NO. 10A-UI-00904-ET

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 12-13-09
Claimant: Respondent (2-R)

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 January 11, 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 March 15, 2010. The claimant participated in the hearing with Attorney Beau Buchholz. Karen Buls, Director of Human Resources, and Rhonda DeBurh, Chief Clinical and Nursing Officer, participated in the hearing on behalf of the employer. Claimant's Exhibits One through Ten were admitted into evidence.

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 social services manager for Waverly Health Center from August 18, 1998 to December 16, 2009. She was discharged for giving the employer a fabricated e-mail she stated was written by employee Jenni Friedly because she was having a personal problem with Ms. Friedly and believed she was having an affair with her husband, who was Ms. Friedly's subordinate, as Ms. Friedly would call the claimant's husband's cell phone late at night or when the claimant was not there and there were rumors going around the hospital about their relationship. On November 24, 2009, the claimant filed a harassment claim against Ms. Friedly, although Ms. Friedly had submitted her 30-day resignation notice effective November 25, 2009. The e-mails in question were exchanged between the parties October 20, 2008, February 27, 2009, and March 2, 2009 (Claimant's Exhibits Seven, Eight and Nine). When the claimant made her complaint, the second paragraph of Ms. Friedly's October 20, 2008, e-mail was whited out by the claimant, who said it was irrelevant (Employer's Exhibit Seven). The employer was concerned that it did not have all of the information and that was one of the reasons it asked the IT department to pull the e-mails in question. The IT department attempted to recover the e-mails and was able to find all but the March 2, 2009, e-mail allegedly sent by Ms. Friedly that the claimant told the employer was threatening in nature. The claimant said she deleted the e-mails after printing them but IT was able to find the deleted e-mails,

including the March 2, 2009, e-mail from Ms. Friedly stating, "Did you get my e-mail Friday?" The hard copy the claimant provided had five sentences instead of six words as found in the e-mail recovered by IT December 14, 2009, and stated, "I am warning you not to go to Rhonda. She is taking me on the journey to become the next CNO at WHC and you will not interfere with that. I WILL get you and Gary fired if you mess with me. Who do you think she will believe – me or you? I am her right hand man – don't forget that. Jenni" (Claimant's Exhibit Nine). The claimant was the chairperson of the ethics committee and the employer felt she had a higher duty to act ethically and be an example to other employees. When confronted with the discrepancies in the two March 2, 2009, e-mails December 16, 2009, the claimant at first could not offer an explanation but eventually admitted fabricating the five sentences in the March 2, 2009, e-mail, stating she felt she needed the threat in writing or the employer would not believe her (Claimant's Exhibit Nine). The employer does not require that evidence be in writing or the incident even witnessed by another person to conduct an investigation; and if a credible threat is found, action is taken. The claimant never said anything about the issues until November 24, 2009, even though she was aware November 25, 2009, was Ms. Friedly's last day. The employer's investigation continued until December 16, 2009, when it met with the claimant and she confessed to writing the e-mail and attributing it to Ms. Friedly. She admitted she knew her employment could be terminated when she did it and agreed that not only did she falsify a document but also implicated another employee by doing so. When the employer asked the claimant what she hoped the employer would do with the falsified information, she indicated she wanted to rehabilitate her husband's reputation because a few days earlier the employer told him he was no longer being considered a candidate for Ms. Friedly's surgery manager position, although neither the director of human resources nor the chief clinical/nursing officer were aware of the rumors of the affair between Ms. Friedly and the claimant's husband. After reviewing all of the information, the employer terminated the claimant's employment December 16, 2009.

The claimant has claimed and received unemployment insurance 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:
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> 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). The claimant created an e-mail and tried to pass it off as Ms. Friedly's written statement to incriminate Ms. Friedly for sending an e-mail threatening that she would have the claimant and her husband fired if they went to the employer about the situation between the three of them. Ms. Friedly did not author the e-mail, however, and the claimant not only falsified that e-mail but also waited over a year to bring up the original e-mails that were sent between the claimant and Ms. Friedly in October 2008, nearly 10 months to report the February 2009 e-mail and nearly nine months to report the March 2009 e-mail, the one in question, to the employer. All of the e-mails were written on the employer's e-mail system and therefore were work-related conduct. The claimant showed a lack of integrity as well as dishonesty in writing the March 2, 2009, e-mail and trying to attribute it to Ms. Friedly, and her actions displayed a conscious effort to discredit Ms. Friedly. She testified she knew when she manufactured the e-mail it could result in the termination of her employment but chose to write it and try to pass it off as Ms. Friedly's anyway. While Ms. Friedly's actions were deplorable as well, under these circumstances, the administrative law judge concludes the claimant did not have to fake an e-mail from Ms. Friedly and 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. Consequently, 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 January 11, 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

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