

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**NICOLE DAVIS**

Claimant

**GENESIS HEALTH SYSTEM**

Employer

**APPEAL NO. 14A-UI-03057-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/11/13**

**Claimant: Respondent (2)**

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Iowa Code § 96.5-2-a - Discharge for Misconduct

Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Genesis Health System (employer) appealed an unemployment insurance decision dated March 11, 2014, (reference 03), which held that Nicole Davis (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 11, 2014. The claimant participated in the hearing. The employer participated through Cindi Richardson, Human Resources Assistant. Employer's Exhibit One was admitted into evidence.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant most recently worked as a full-time certified nursing assistant and was employed from October 28, 2013, through February 10, 2014, when she was discharged for three days of no-call/no-show. The employer's policy provides for termination if an employee is absent without notice for three consecutive days. The claimant was incarcerated from February 5, 2014, through February 10, 2014, for filing a false police report. She said her mother reported her absences but the employer received no notification until February 9, 2014, when notice was provided less than a half hour prior to the beginning of her shift instead of the required two hours prior to the shift.

The claimant filed a claim for unemployment insurance benefits effective August 11, 2013, and has received benefits after the separation from employment in the amount of \$2,534.00. The employer submitted detailed written documents for the fact-finding interview and provided the names and numbers for two witnesses. Cindi Richardson testified that she never received a call for the fact-finding interview.

## REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on February 10, 2014, after she was a no-call/no-show for three consecutive days due to incarceration. Two consecutive no-call/no-show absences can constitute job misconduct. *Boehm v. IDJS*, (Unpublished, Iowa App. 1986).

Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer. 871 IAC 24.32(7). The claimant's absences were not for reasonable grounds and were not properly reported. The employer has met its burden to establish disqualifying misconduct. Benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

In the case herein, the benefits were not received due to fraud or willful misrepresentation and the employer witness did not personally participate in the fact-finding interview. However, the employer representative sent in detailed written documentation which contained factual information regarding the reasons for the discharge. The employer also provided the names and numbers for two witnesses and one of those witnesses testified she did not receive a telephone call. In accordance with the Agency definition of participation, the employer participated in the fact-finding interview and its account is not subject to charge. See 871 IAC 24.10. Consequently, a waiver cannot be considered and the claimant is responsible for repaying the overpayment amount of \$2,534.00.

**DECISION:**

The unemployment insurance decision dated March 11, 2014, reference 03, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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 is overpaid benefits in the amount of \$2,534.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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