

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONDA L TROENDLE
Claimant

APPEAL NO. 06A-UI-10895-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 09-24-06 R: 02
Claimant: Respondent (2)

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 November 1, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 28, 2006. The claimant did participate along with her witness Kathy Large, former coworker. The employer did participate through Christen McAdams, Director of Nursing, Amy Johnson, Administrator, and was represented by Mike Sloan of TALX UC eXpress. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work related misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a CMA and CNA full time beginning June 1, 2004 through October 6, 2006, when she was discharged.

On September 26, the claimant made a statement to Christen McAdams and Amy Johnson that she was aware of a compliance issue in the facility and that she had been doing all of the third shift treatments while the nurses continued to sign off as though the treatments had been done by themselves. The claimant then told Ms. McAdams and Ms. Johnson that she was no longer doing the treatments that were assigned to her by the nurses and that she had not told the night nurses that she had ceased doing the treatments, so the nurses were still signing off on the records as though the treatments were being done.

During a later September 28 conversation where both Ms. Johnson and Ms. McAdams were present, the claimant refused repeatedly to cooperate with the employer's investigation by answering questions or providing any specifics that she had alluded to on September 26. As a result of the employer's investigation a number of nurses were disciplined, including Kathy Large, a third shifts nurse.

After making the employer aware of what she suspected were problems, the claimant then refused to cooperate in any way with the employer's investigation into her report of wrongdoing. The claimant told the employer that she would not speak to anyone with the corporation nor would she cooperate with their investigation. The claimant had signed off on the employer's procedures that required her to cooperate in any investigation the employer was conducting. The employer offered to let the claimant provide her specifics through the corporate office, through an employee assistance program or through any other corporate officer, but she refused to provide any more specifics.

The claimant has received unemployment benefits since filing a claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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 reported a problem to both Ms. McAdams and to Ms. Johnson on September 26 and then refused to provide any more details about any wrongdoings she knew were occurring. The claimant was offered the opportunity to provide her information to the corporate human resources department or to the anonymous hotline. The employer investigated with the limited knowledge they were given, and as a result two of the nurses were disciplined, including Kathy

Large. The claimant had an obligation to cooperate fully with the employer in their investigation of wrongdoing. Her refusal to cooperate after reporting wrongdoing is misconduct. The claimant owed it to her employer to fully cooperate with the investigation to protect the residents and to allow the employer to insure that residents were receiving adequate medical care. The claimant's refusal to cooperate constitutes disqualifying misconduct. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The November 1, 2006, 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 is overpaid benefits in the amount of \$2,226.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw