

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA TOALA
Claimant

APPEAL NO. 13A-UI-10555-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 08/04/3
Claimant: Respondent (2)

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment
871 IAC 24.50(10) – Employer Participation

STATEMENT OF THE CASE:

The employer, The University of Iowa, filed an appeal from a decision dated September 10, 2013, reference 01. The decision allowed benefits to the claimant, Patricia Toala. After due notice was issued a hearing was held by telephone conference call on October 9, 2013. The claimant did not provide a telephone number where she could be contacted and did not participate. The employer participated by Benefits Specialist Mary Eggenburg and Nurse Manager Sheryl Lang.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

Patricia Toala was employed by University of Iowa from October 28, 2012 until August 9, 2013, as a registered-time nurse.

On July 16, 2013, a patient needed oxygen and suction and Ms. Toala had to summon other staff to help. These staff members noted Ms. Toala seemed not to be able to function in the situation, not even to answering the questions from the doctor. This was reported on July 18, 2013, the employer met with the clamant to express concerns.

After that the assistant director of nursing was ordered to pull the "diversion reports." These show the documentation about the disposition of narcotics. It was found there were several failures to document the "waste" of narcotics. This means when a certain amount of a drug is removed for use, and not all of it is used, the remainder must be disposed of as "waste" and documented by the administering nurse and another nurse to confirm the action. There was

one incident where two doses of a controlled substance were removed for use but the patient records showed only one had been prescribed and used.

On August 2, 2013, the claimant was placed on administrative leave when Nurse Manager Sheryl had consulted with her immediate supervisor and the nursing human resources representative. On August 8, 2013, the claimant was to meet with the employer and was given the opportunity to consult with an advance practice nurse beforehand. In the meantime the employer pulled more "diversion reports" to prepare for the meeting.

Ms. Toala met with the nurse manager and others and immediately admitted she had been having personal problems in her marriage. She admitted she had been so "stressed out" she had simply not followed the necessary policies and procedures regarding the documenting of controlled substances. She said she "got sloppy." The claimant was discharged the next day by Ms. Lang.

Patricia Toala has received unemployment benefits since filing a claim with an effective date of August 4, 2013. The employer's participation in the fact-finding interview was via documentation which included the termination letter. The letter detailed the reasons for the discharge which, if unrebutted, would have been sufficient to meet its burden of proof.

REASONING AND CONCLUSIONS OF LAW:

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 acknowledged to the employer she knew the policies she was required to follow regarding disposition of controlled substances but merely “got sloppy” because of personal problems and did not follow them. The employer’s concerns over the safety of patients, proper documentation for legal purposes and the claimant’s somewhat cavalier attitude to “getting sloppy” are valid. Following these policies and documenting properly the handling of controlled substances is a vital and serious part of the nurse’s job duties. The claimant’s failure to follow them is a violation of the duties and responsibilities the employer has the right to expect of an employee. It is conduct not in the best interests of the employer and the claimant is disqualified.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer’s account will be charged for the overpaid benefits. Iowa Code section 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative’s decision of September 10, 2013, reference 01, is reversed. Patricia Toala is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The claimant is overpaid unemployment benefits in the amount of \$2,856.00. This must be recovered in accordance with the provisions of Iowa law.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css