

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK E SPRIGGS

Claimant

APPEAL NO. 08A-UI-00533-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SYSTEMS UNLIMITED INC

Employer

**OC: 12/16/07 R: 03
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 8, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 30, 2008. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Kari Wilkens participated in the hearing on behalf of the employer with a witness, Tammy Reynolds.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a senior counselor from January 31, 2007, to December 13, 2007. The employer provides services to individuals with developmental disabilities. One of the claimant's jobs was to make sure clients had the medication that they needed. On August 24, 2007, the claimant was retrained on the employer's medication policy after he had failed to obtain a prescription medication for a client.

The claimant received a critical warning on October 4, 2007, for having an improper conversation with a client. The claimant was absent from work without notice to the employer on November 26. He missed a scheduled meeting without notice to the employer on November 27. He received a final warning on December 3, 2007, after he failed to pick up an emergency pager that he was required to have because he was on-call over the Thanksgiving holiday.

On December 4, 2007, the claimant's supervisor informed him that one of the clients was about to run out of one of his medications and he was required to pick up the prescription from the pharmacy on December 7. The claimant failed to pick up the medication and the client went without necessary medication on December 8, 9, and 10. When the claimant's supervisor found

out the claimant had neglected to pick the prescription, the claimant was discharged for repeated negligence and his prior record of misconduct.

The claimant filed for and received a total of \$1,461.00 in unemployment insurance benefits for the weeks between December 16, 2007, and January 19, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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's conduct meets the standard of work-connected misconduct. In the end, he willfully disregarded the instructions given to him, despite repeated warning about his work performance.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,461.00 in unemployment insurance benefits for the weeks between December 16, 2007, and January 19, 2008.

DECISION:

The unemployment insurance decision dated January 8, 2008, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,461.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs