

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOY A RUTHERFORD**  
Claimant

**APPEAL NO: 11A-UI-04770-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 03/06/11**

**Claimant: Respondent (2/R)**

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

**STATEMENT OF THE CASE:**

Care Initiatives (employer) appealed a representative's March 30, 2011 decision (reference 01) that concluded Joy A. Rutherford (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 10, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Michelle Lawson and Lynn Saur. During the hearing, Employer's Exhibits One through Four and Six through Ten were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 7, 2008. She worked full time as a licensed practical nurse (LPN) at the employer's Manly, Iowa facility. Her last day of work was March 7, 2011. The employer discharged her on that date. The stated reason for the discharge was falsification of a medical record.

The claimant worked the day shift on March 4 and was responsible for the care of a specific resident. One of the medications prescribed for that resident was for treatment of tremors from Parkinson's, to be administered four times a day. One of the times for administration was at noon. On Friday, March 4 the claimant failed to give the resident this medication at noon; when the evening nurse took over, the labeled noon medication was still in its packet, and the resident's medication record showed no administration of the medication at noon. This was reported to the administrator, Ms. Saur, and to the director of nursing, Ms. Lawson, and copies of the records and the packet were made.

The claimant did work the weekend shifts on March 5 and March 6. At about 8:30 a.m. on Monday, March 7, Ms. Lawson went back to the resident's medication record and to the medication packet. She found that the medication in question was no longer in the medication packet and that the resident's medication record had been altered since the prior Friday evening to reflect that the claimant had supposedly administered the medication in question at noon on the Friday.

Ms. Lawson summoned the claimant into her office and showed her the different copies of the resident's medication record and the medication packets. The claimant initially denied falsifying the record (and presumably disposing of the medication), but about ten minutes later came back to Ms. Lawson and admitted that she had gone back and falsified the medication report. Her explanation for doing so was to seek to conceal her omission to administer the medication as prescribed, as she realized she was on a final warning for a major performance issue from October 5, 2010, and would likely be discharged for the medication error if it were discovered. As a result of the medical record falsification, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective March 6, 2011. The claimant has received unemployment insurance benefits after the separation.

#### **REASONING AND CONCLUSIONS OF LAW:**

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's intentional falsification of the medication record in order to seek to conceal a medication administration omission shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

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 § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's March 30, 2011 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of March 7, 2011. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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