

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KATHY SPRING**

Claimant

**APPEAL NO. 14A-UI-03636-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TABOR MANOR CARE CENTER INC**

Employer

**OC: 03/09/14**

**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:**

Tabor Manor Care Center, Inc. (employer) appealed an unemployment insurance decision dated March 28, 2014, (reference 01), which held that Kathy Spring (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 25, 2014. The claimant participated in the hearing. The employer participated through Administrator Mitchell Worcester. Employer's Exhibits One through Three were 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 worked as a full-time certified nurse's aide and was employed from February 28, 2012, through February 26, 2014, when she was discharged for repeated inappropriate conduct. On February 25, 2014, the claimant and co-employee Todd Guiser were providing per-care on a resident when the resident tried to hit the claimant. The claimant became angry and said, "If you hit me, I'll hit you back!" Mr. Guiser reported the comment to the charge nurse and the director of nursing. The claimant became aware Mr. Guiser reported her conduct and said to him, "You just wait until I catch you doing something wrong, you little punk, you screw up all the time." The claimant admitted she made the first two statements but denied the last. That same day, the claimant was transferring a resident by herself when the resident was a two-person transfer.

The claimant had been previously warned about similar issues. She received a verbal warning on December 12, 2013, based on resident complaints that she rushed through her cares. The employer had difficulty placing the claimant since several residents refused to allow her to provide their cares. The claimant had two warnings in 2013 for failure to follow policy regarding

proper transfers and repositioning residents. She also received a warning on May 31, 2012, for being "hateful" and having a negative attitude with residents.

The claimant filed a claim for unemployment insurance benefits effective March 9, 2014, and has received benefits after the separation from employment in the amount of \$1,662.00. Administrator Mitchell Worcester participated in the fact-finding interview on behalf of the employer.

#### **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 for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on February 26, 2014, for repeated inappropriate conduct. The final incident was her threat to a resident that she was going to hit him because he was attempting to hit her. The claimant had received numerous disciplinary warnings for similar conduct. Her conduct 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. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and 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, a waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount of \$1,662.00.

**DECISION:**

The unemployment insurance decision dated March 28, 2014, (reference 01) 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 \$1,662.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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