

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REGINA D BROWN
Claimant

APPEAL NO. 13A-UI-02002-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIDGECREST VILLAGE
Employer

OC: 01/20/13
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 18, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 18, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Nancy Herberg participated in the hearing on behalf of the employer with a witness, Gina Houszenga. Exhibits One through Eight were admitted into evidence at the hearing.

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 clinical coordinator and registered nurse from October 13, 2010, to January 13, 2013.

On January 19, 2013, the physician's orders were changed for a resident to double the dosage of an anti-anxiety medication. The claimant was working at the time and made a notation on the resident's chart that the medical administration record (MAR) had been updated. In fact, the MAR continued to have the old dosage and it was not updated on January 19.

During the day on January 20, the resident continued to receive the lower dose of the medication as recorded on the MAR. That evening at about 5:50 p.m., the claimant gave the certified medication aide (CMA) permission to give the resident another dose of the medication. The CMA gave the lower dose as reflected on the MAR and provided the claimant with a slip of paper with the dose, date, and time written on it.

When the claimant received the paper, she noticed the MAR had not been updated properly the night before and the resident had received half the dosage required under the current doctor's order. She scratched out the old dosage on the MAR and wrote in the new dosage there and

on bottle of the medication label. She told the CMA that the resident had not received the right dosage of the medication. The CMA then checked the MAR and bottle and found that the old dosage had been scratched out on the label of the bottle and the MAR. She asked the claimant and another nurse who had scribbled out the old dosage. The claimant said she had put a line through old dosage. She asked the CMA to give the resident another half dose of the medication so the resident would receive the full dose required by the doctor's order and it could be charted. The CMA believed the claimant was asking her to do something to cover up a medication error and refused. The claimant said to the CMA and nurse that she was going to be in trouble for the error.

The claimant then went back to her January 19th entry on the resident chart and added "agency had reported" before the entry "MAR updated" to reflect that the agency nurse reported to her that she had updated the MAR. She had borrowed a pen from the nurse, and when she returned it, she remarked, "you did not see any of this."

The CMA and nurse both reported what had happened to the director of nursing. The employer discharged the claimant on January 23, 2013, for her conduct on January 20 regarding the MAR and adding information to the resident's chart.

The claimant filed for and received a total of \$1,607.00 in unemployment insurance benefits for the weeks between January 20 and February 23, 2013.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony that she did not add "agency had reported" before the entry "MAR updated" on January 20, but instead had written on January 19 is not believable. She said she got distracted, which cause her to extend her writing across a column reserved for the nurse's name, but it is more likely based on a review of evidence that the claimant was shifting some of the blame for the MAR not being updated to the agency nurse.

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of honest behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated February 18, 2013, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/tll