

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REGINA M HADLEY**  
Claimant

**APPEAL NO. 07A-UI-08243-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABCM CORPORATION**  
Employer

**OC: 07/15/07 R: 02  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, ABCM, filed an appeal from a decision dated August 20, 2007, reference 03. The decision allowed benefits to the claimant, Regina Hadley. After due notice was issued a hearing was held by telephone conference call on September 12, 2007. The claimant participated on her own behalf. The employer participated by Administrator Angie Klus and Certified Nursing Assistant (CNA) Amy Follmuth.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Regina Hadley was employed by ABCM from April 23 until July 13, 2007, as a full-time CNA. On July 13, 2007, the human resources personnel received a list from CNA Tafeeta Benson of 11 different problems and concerns of the claimant regarding her treatment of residents. She had signed off cares without performing them or signed the names of other CNAs to the cares. She had removed clothing from a resident in an “abrupt” manner, had not put underwear on some residents and advised other aides to do the same, did not toilet residents when needed or required, left another resident unattended on the toilet contrary to doctor’s orders, and did not use a “kind and considerate” voice in the dining room. She allegedly told one resident who complained of rough handling, “don’t look at me like that, I don’t feel sorry for you,” and ate food off the snack cart for the residents.

The human resources personnel referred the matter to Administrator Angie Klus who interviewed Ms. Benson and two other CNAs who all confirmed the claimant’s conduct. Amy Follmuth had previously brought her concerns to the assistant director of nursing and the only response had been a memo posted by the time clock reminding staff of the standards of patient treatment required by the employer. Ms. Follmuth had, on July 12, 2007, observed the claimant not having a second person assist with lifting a resident when two are required, and leaving the east wing understaffed with only one CNA, when two are required, to go to the west wing.

The claimant denied all the allegations when she was interviewed by Ms. Klus, but the employer felt the reports of long-standing and proven staff members to have the greater weight and discharged Ms. Hadley on July 13, 2007.

Regina Hadley has received unemployment benefits since filing a claim with an effective date of July 15, 2007.

**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 denied all the allegations against her when she was interviewed by the employer prior to the discharge. However, at the hearing she did admit to several policy violations such as accepting the snacks from the residents in violations of policy, not using a gait belt on a resident, signing the names of other CNAs to documentation, and leaving a resident, who was a fall risk, unattended on the toilet. These violations, in and of themselves, are sufficient to warrant a discharge and denial of unemployment benefits. The claimant failed to provide the care to the residents and the employer is responsible for the care of these dependent adults. In addition, Ms. Hadley's admission to these violations calls into question her denial of the other allegations. She has also failed to provide convincing evidence as to why her co-workers would fabricate these allegations against her.

The record establishes the claimant was discharged for conduct not in the best interests of the employer and she is disqualified.

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.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of August 20, 2007, reference 03, is reversed. Regina Hadley is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,688.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css