

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARI L WORTMAN

Claimant

APPEAL NO. 12A-UI-07579-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC

Employer

OC: 05/27/12

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge
Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, Good Samaritan Society, filed an appeal from a decision dated June 15, 2012, reference 01. The decision allowed benefits to the claimant, Mri Wortman. After due notice was issued a hearing was held by telephone conference call on July 20, 2012. The claimant participated on her own behalf. The employer participated by Administrator Amanda Nobles.

ISSUES:

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

FINDINGS OF FACT:

Mari Wortman was employed by Good Samaritan Society from April 15, 2011 until May 13, 2012 as a part-time CNA. She injured her back and hip in December 2011 in a non-work-related accident. She was on a "general" leave of absence and her doctor submitted a document to the employer releasing her to return to work on January 22, 2012.

On January 22, 2012, Ms. Wortman was again seen by her doctor. At that point she was advised to go to a chiropractor for treatment. The doctor's office was to send a new statement to the employer indicating the claimant could not return to work until she had seen her chiropractor, but this statement, being faxed, was never received. Ms. Wortman knew the employer had not received the statement but other than asking the doctor's office to fax another one, took no firm, personal action to make sure the statement was received.

On April 9, 2012, Sherri Hogle, of the human resources office, sent the claimant a letter stating the employer needed to have a doctor's statement and direct contact from Ms. Wortman, no later than April 25, 2012. She did not call until May 8, 2012, at which time she asked Ms. Hogle if any part-time work was available on the day shift. There were no part-time positions open but PRN status was. She was discharged by Administrator Amanda Nobles effective May 13, 2012, for failing to keep the employer notified of her status and not providing the documentation from her physician.

As of the date of the hearing the claimant has not been fully released to return to work by her attending physician, although the chiropractor has released her without restriction.

Mari has received unemployment benefits since filing a claim with an effective date of May 27, 2012.

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 was not discharged for illness and absenteeism but for not keeping the employer advised of her status and providing the required statements from her doctor. Ms. Wortman was fully aware the doctor's notes from January 22, 2012, had not been received by the employer but made no effort to make sure a copy was provided. She could have contacted her physician's office to get a copy of the note, and sent that note herself to the employer but she did not. She lacked transportation to go herself but does not appear to have made an effort to find transportation for this as she did in order to go to her doctor's appointments.

The record establishes the claimant was discharged for failing to keep the employer apprised of her medical situation. If the employer is approving a leave of absence, requiring medical updates is not an unreasonable expectation. Absences due to illness must be properly reported before they are excused. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Failure to keep the

employer informed is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Ms. Wortman is not able and available for work as of the date of the hearing because she has not been fully released to return to work by her physician. A "recovery" means a complete recovery without restriction. *Hedges v. IDJS*, 368 N.W.2d (Iowa App. 1985).

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of June 15, 2012, reference 01, is reversed. Mari Wortman is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided her is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs