

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTINE M WILLIAMS**  
Claimant

**APPEAL NO: 17A-UI-10661-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMES ORAL SURGEONS**  
Employer

**OC: 09/24/17**  
**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 13, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 14, 2017. The claimant participated in the hearing. Dr. Peter Cho; Owner; Dr. John Cazwell, Owner; Dr. Robert Rudman, Owner; Deanna Stone, Office Manager; Mia Solverson, Front Office Receptionist; Lisa Sunstrom, Front Office Staff; and Emily Mahoney, Front Office Staff, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time front office staff member for Ames Oral Surgeons from June 1, 2015 to September 29, 2017. She was discharged for being loud and rude to patients and the employer's referral base.

On June 13, 2016, the employer held the claimant's one year performance review. The employer stated the claimant needed to be friendly to patients, lower her voice in the front office and stay off her cell phone.

On January 6, 2017, the employer issued the claimant a verbal warning after a patient came into the office January 3, 2017, to try to make an emergency appointment and the claimant treated him in a rude manner and offered him an appointment in a day or two. The patient was in pain and was upset about the wait and left. There was one doctor there but the claimant did not ask him to see the patient. The claimant did not show concern for the patient and another patient's mother was in the waiting room and overheard the conversation. She thought the claimant was very rude to the patient and offered to take him to her general dentist so he could be seen that day and the patient accepted her offer. The patient, the other patient's mother,

and the dentist the patient ended up seeing all called the employer to complain about the claimant's behavior and demeanor.

On September 27, 2017, an elderly nursing home patient arrived at the office with his driver from Crestview Nursing Home. The claimant asked if the patient could complete the paperwork or if his driver could do so but after trying the driver told the claimant they could not do the paperwork. The claimant told them the patient could not be seen for the consultation if the paperwork was not done and another employee at the front desk suggested the claimant call the nursing home to see if they had the folder containing the patient's information. The claimant called and spoke to a nurse. She "rudely told" the nurse the employer could not treat the nursing home patients if they arrived at their appointments without the completed paperwork or a nurse accompanying the patient. The conversation became heated and the nurse told the claimant she was being rude and the claimant said, "No, you are the one being rude," and hung up on the nurse. A front desk employee went to get the office manager who arrived at the front desk in time to receive the phone call from the nurse who called back to speak to the claimant's supervisor. The nurse told the office manager she had never been talked to so rudely by any office and if the employer did not do something about the situation she would be cancelling an upcoming personal appointment she had and they would never refer the nursing home patients to the employer again.

During the last year of the claimant's employment the employer received five to seven calls complaining about the way the claimant treated various patients and referring practices.

After the September 27, 2017, situation two of the three owners/doctors from the practice met with the claimant and notified her it was terminating her employment.

The claimant has claimed and received unemployment insurance benefits in the amount of \$1,990.00 for the six weeks ending November 4, 2017.

The employer personally participated in the fact-finding interview through the statements of Dr. Robert Rudman. The employer also submitted written documentation for the fact-finding interview.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The employer is a small business that relies on word of mouth referrals from patients and referral services. As a front office staff member the claimant was often the face and voice of the office. As such, she had a heightened responsibility to represent the employer in a professional and appropriate manner at all times, regardless of whether she became frustrated with a patient or referral service or, as in the last incident, a nursing home nurse. There is never an excuse for the claimant to speak to patients or referring services loudly or rudely. Additionally, as a health care worker the claimant had a duty to treat patients, many of whom are experiencing severe pain, kindly. Instead, the claimant demonstrated a pattern of unfriendly and rude behavior to patients and referring services that was detrimental to the employer.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if

unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the

employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The employer participated in the fact-finding interview personally through the statements of Owner Dr. Robert Rudman. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of \$1,990.00 for the six weeks ending November 4, 2017.

**DECISION:**

The October 13, 2017, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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 has received benefits but was not eligible for those benefits. The employer personally participated in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of \$1,990.00 for the six weeks ending November 4, 2017.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs