

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

VICKI MURREN  
1420 AVE I  
HAWARDEN IA 51023-1543

CAREAGE MANAGEMENT LLC  
WESTBEND CARE CENTER  
1512 PIERCE ST  
SIOUX CITY IA 51105

Appeal Number: 06A-UI-03987-BT  
OC: 03/19/06 R: 01  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96 5-2-a - Discharge for Misconduct  
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Careage Management (employer) appealed an unemployment insurance decision dated April 5, 2006, reference 01, which held that Vicki Murren (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 28, 2006. The claimant participated in the hearing. The employer participated through Dan Meyers, President and Dee Hendricks, Director of Nursing.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time licensed practical nurse/charge nurse from October 24, 2004 through March 22, 2006, when she was discharged for policy violations and conduct not in the best interest of the employer. The employer's handbook divides policy violations into three categories. Category A includes minor violations, Category B includes serious violations for which discharge could occur, and Category C includes major policy violations for which immediate discharge is likely. A Category B violation includes using profane or unacceptable language or talk in the presence of or hearing distance of a resident. Category A violations include resident/patient abuse or neglect of resident/patient care duties directly related to the safety, health, and/or physical or mental well-being of a resident or patient.

On June 21, 2005, the claimant was warned regarding her lack of professionalism and the need to improve her communication skills. In her annual evaluation on November 15, 2005, this was still an issue so she was only given half of her customary pay raise. A follow-up was held on February 15, 2006, and the claimant was given the other half of her raise but still had problems with professionalism and communication. The claimant was verbally counseled again on March 15, 2006, over the communication and professionalism responsibilities of a charge nurse. She explained this incident as resulting from a complaint about how the claimant spoke to a non-employee about an employee. The employer stated the counseling was regarding the claimant's alleged derogatory comment about the co-employee's perceived disability.

On the evening of March 22, 2006, the claimant was working when a resident became agitated and restless. He got up and walked into the hallway and three employees assisted him back into his room. In the last ten days, this resident had fallen four times. The claimant was in his room and without assessing the resident, she left to go into the narcotic drawer. The resident had an order in his chart to administer Roxonal for pain and Ativan for restlessness. The claimant came back to the resident's room with a dosage of Roxonal, which the resident said that he did not want to take. Residents have the right to refuse medication. The claimant told him that he was going to take it and that it tasted like shit but he did not need to worry since he would be asleep in an hour anyway. The liquid Roxonal was administered to the resident by the claimant.

A registered nurse who witnessed the incident reported it to the employer the next morning and advised there were two nurse aides who also witnessed the incident. The claimant was suspended without pay while the employer investigated the matter. Statements were taken from the three witnesses, who each provided the same information. The claimant was called in and while she did have remorse for how she handled the situation, she admitted the information was true. The claimant was discharged but the employer had to report the incident to the board of nursing, the ombudsman, the medical director, the care review team and the family.

The claimant filed a claim for unemployment insurance benefits effective April 5, 2006, and has received benefits after the separation from employment.

#### 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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for policy violations and conduct not in the best interest of the employer. Her actions on March 22, 2006, were equivalent to using a chemical restraint against a resident. The claimant testified that she believed the resident's order for Roxonal was used for pain and restlessness but the employer later testified that the resident has an order for Ativan for restlessness. The claimant's violation of known work rules was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of 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 and benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated April 5, 2006, 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 \$892.00.

sdb/kkf