

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY K RUGER**

Claimant

**APPEAL NO: 12A-UI-03317-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRAPETREE MEDICAL STAFFING INC**

Employer

**OC: 02/12/12**

**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's March 29, 2012 determination (reference 02) that held the claimant eligible to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Tim Kinnetz, Kelly Seymour, Christa Ingram, Mandy Agan, Jennifer Stuckey and Jeanenne Kinnetz appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the employer's arguments, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer as a part time CNA in April 2009. The employer provides temporary or substitute health care workers to facilities who contract with the employer.

The branch staffing manager talked to the claimant on November 29, 2011, about three facilities who did not want the claimant to return to work at their facility. The employer put the claimant on six months probation. The problems the facilities reported ranged from not keeping up with job duties, a personality conflict, discussing personal issues with residents and failing to take initiative. The probation notice warned claimant that if the employer received another Do Not Return to another facility request, the claimant could be discharged. (Employer Exhibit One.)

On December 14, the employer again talked to the claimant. Another facility asked that the employer not assign the claimant to work at the facility. (Employer Exhibit Two.) Employees at this most recent facility reported the claimant would did not answer call lights, would not help residents back to their rooms after eating in the dining room, talked on her cell phone while working and sat around instead of working with residents. The claimant did not work after

December 13 and received a letter on December 20 confirming the employer had discharged her on December 14, 2012. (Employer Exhibit Two.)

The claimant established a claim for benefits during the week of February 12, 2012. She has filed for and received benefits since February 12, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the evidence presented during the hearing, the claimant knew or should have known her job was in jeopardy when the employer put her on probation on November 29, 2011. The employer told her why three facilities did not want her assigned to work at their facility again. The employer received another Do Not Return request from a different facility in mid-December. This facility reported that the claimant violated rules, used her cell phone while working and did not work with residents she had been assigned to help. As a result of the complaints and another facility asking that the claimant not be assigned to work there again, the employer discharged the claimant. Since the claimant did not participate in the hearing, the employer's testimony is not disputed. The employer established the claimant was discharged for disqualifying reasons.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits she has received since February 12, 2012, will be remanded to the Claims Section to determine.

**DECISION:**

The representative's March 29, 2012 determination (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 12, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for

insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of overpayment is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs