

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

LISA K WISER
514 A SOUTH RANDOLPH ST
STACYVILLE IA 50476

CONTINUUM HEALTH CARE SERVICES LC
PO BOX 193
ANKENY IA 50021-1624

AMENDED

Appeal Number: 04A-UI-02220-RT
OC: 01/25/04 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a- Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Continuum Health Care Services, L.C., filed a timely appeal from an unemployment insurance decision dated February 20, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Lisa K. Wisser. After due notice was issued, a telephone hearing was held on March 17, 2004, with the claimant participating. Tim H. Mortenson, President, participated in the hearing for the employer. Employer's Exhibits One through Four were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant. The employer was to have been represented by an attorney, Anthony A. Longnecker, Attorney at Law, but Mr. Longnecker withdrew from the representation of the employer and did not participate in the hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One through Four, the administrative law judge finds: The claimant was employed by the employer as a full-time administrator of the employer's nursing home facility in Stacyville, Iowa, from February 2000 until she was discharged on January 29, 2004. The employer provides nursing home facilities and care to elderly residents, and the claimant, as administrator, was in charge of the employer's nursing home in Stacyville, Iowa, called Stacyville Community Nursing Home. The claimant was discharged because the employer lost confidence in her abilities to operate the facility on a day-to-day basis and because of misconduct, in particular, her unauthorized expenditure of funds for contract services to one Larry Ribble. The claimant hired Mr. Ribble to provide certain services on a contract basis for the Stacyville Community Nursing Home. Mr. Ribble was paid \$12,283.76 for these services from May 2003 to December 2003 as shown at Employer's Exhibit Four. At no time did the claimant ever get approval for the hiring of Mr. Ribble on a contract basis from the employer or the Board of Directors for the Stacyville Community Nursing Home. However, the employer has a policy that contract spending limits were \$1,000.00 and that the Board would be kept up to date on other expenditures as shown at Employer's Exhibit One which are the minutes of the Board of Directors of the Stacyville Community Nursing Home for January and February of 2000. The claimant participated in the February 2000 meeting in which the minutes of the January meeting were read and approved. During the course of the claimant's tenure, and in particular on January 21, 2003; March 18, 2003; May 20, 2003; and June 17, 2003; the claimant presented to the Board of Directors certain payments for contract labor or purchases as shown at Employer's Exhibit Two. However, at no time did the claimant ever submit any expenditures made to Mr. Ribble, either to the Board of Directors or to the employer in any other way. Mr. Ribble was to provide contract services including modifying diets and menus served to the residents, certain quality assurance matters, and the preparation of an employee's handbook, among others. Much of Mr. Ribble's work was performed off site and through the use of email. However, the claimant was unable to provide any examples of Mr. Ribble's work or any substantiation for his work and the services rendered, to the employer.

The claimant submitted invoices herself to the employer approximately every two weeks by giving such invoices to the office manager, who reported to the claimant, who would then prepare a check for the services which would be signed either by the office manager or the claimant, an example of which is shown at Employer's Exhibit Three. The checks were then deposited in a joint account maintained by Mr. Ribble and the claimant. In fact, the claimant even signed some checks to Mr. Ribble for deposit only as shown by Employer's Exhibit Three. The claimant was a friend of Mr. Ribble and they maintained a joint bank account.

These matters came to light when the accountant for the Stacyville Community Nursing Home felt that a 1099 statement should be prepared and sent to Mr. Ribble for his contract services and the claimant questioned this decision. The accountant then informed the employer's witness, Tim H. Mortenson, President, who learned of these matters on January 23, 2004 and then conducted an investigation resulting in the claimant's suspension on January 26, 2004 and her discharge on January 29, 2004.

The claimant was aware of the employer's policies about a limit of \$1,000.00 on contract services but felt that they applied only to capital purchases. The claimant placed all of the expenditures for the contract services of Mr. Ribble in the contract nursing account so that it was not readily apparent that he was being paid for these services even though they were not

nursing services. During this period of time, the Stacyville Community Nursing Home was experiencing serious financial difficulties. The claimant never submitted any of these services for bids nor did she ever contract other suppliers. She stated that the town was too small to provide such services, but conceded that Mr. Ribble did most of the services by email from off site at some distance. The claimant did not know what appropriate costs should be paid to Mr. Ribble for these services just as she did not know the appropriate costs for the payment of such expenses as for a lawn mower, which were sent to the Board of Directors. Some of the services could have been performed by internal staff. The claimant received no warnings or disciplines or performance reviews about these matters.

Pursuant to her claim for unemployment insurance benefits filed effective January 25, 2004, the claimant has received unemployment insurance benefits in the amount of \$2,400.00 as follows: \$300.00 per week for eight weeks from benefit week ending January 31, 2004 to benefit week ending March 20, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is.

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).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Tim H. Mortenson, President, credibly testified and produced documentation which was admitted into evidence, that the claimant hired a friend, Larry Ribble, with whom she maintained a joint checking account to perform contract services for the employer in the amount of \$12,283.76 without ever obtaining approval or informing the employer or the Board of Directors of the Stacyville Community Nursing Home where the claimant was the administrator and in charge. However, the evidence establishes that the claimant did inform the Board and obtain approval for other kinds of contract expenses. The contract payments to Mr. Ribble by the claimant extended for approximately eight months. Many of the expenditures were made to Mr. Ribble while he was off site and a distance from the employer and the Stacyville Community Nursing Home. In fact, the claimant testified that much of the work by Mr. Ribble was done by email but the claimant was unable to provide any examples or substantiation for Mr. Ribble's work. The claimant was a friend of Mr. Ribble and maintained a joint account with him and the claimant even signed checks for these expenditures to Mr. Ribble as shown at Employer's Exhibit Three. The claimant was aware of the employer's policies that contract matters should be submitted to the Board of Directors and approved by them and did so for certain contract matters as shown at Employer's Exhibits One and Two. However, the claimant testified that she believed this was only for capital expenditures and were not required for the expenditures to Mr. Ribble. The administrative law judge finds this testimony not credible. The administrative law judge is not convinced that some of Mr. Ribble's services, if performed, were not capital expenditures such as the quality assurance matters and the preparation of a handbook for employees. The claimant tried to justify placing all of these expenditures in the contract nursing account, but the administrative law judge does not believe that they justify such placement. The administrative law judge concludes that the claimant was actually trying to hide these expenses by putting them in the contract nursing account rather than in more relevant accounts such as for dietary needs, food, or other types of accounts. Finally, when the matter arose because of the accountants need to prepare a 1099, the claimant questioned this. The administrative law judge concludes that the claimant was in effect, attempting to conceal the expenditures to Mr. Ribble. The evidence establishes that the claimant made no effort to obtain similar services from others or to obtain bids or to even inquire as to what others might perform the services for. The claimant even conceded that she did not know what the appropriate costs would be for the services Mr. Ribble was allegedly performing. Just as she did not know the costs for the lawn mower and so forth, which she said were submitted to the Board of Directors because she was unaware of those costs. If she was unaware of the costs of Mr. Ribble's services surely she should have also submitted those to the Board of Directors or at least inquired of the Board of Directors about such services or made inquiries from the employer. The claimant did not do so.

Accordingly, and for all the reasons set out above, the administrative law judge is constrained to conclude here that the claimant's actions were deliberate acts or omissions constituting a material breach of her duties and obligations arising out of her worker's contract of employment

and evince willful or wanton disregard of the employer's interests and are at the very least carelessness or negligence of such a 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, all of which are disqualifying misconduct. It is true that the claimant received no warnings or disciplines and she testified that she thought she should have been reprimanded rather than discharged. The administrative law judge disagrees. This conduct continued for such a period of time without coming to the light of anyone other than the claimant that the conclusion must be reached that the claimant was concealing these matters and therefore a disqualification to receive unemployment insurance benefits without warnings or disciplines is justified. The administrative law judge specifically notes that throughout this time, the Stacyville Community Nursing Home was encountering financial difficulties and the claimant, as administrator, was the sole person in charge. It does no good to pass blame to anyone including and especially the office manager who reported to the claimant.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

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 administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$2,400.00 since separating from the employer herein on or about January 29, 2004, and filing for such benefits effective January 25, 2004, to which she is not entitled and for which she is overpaid. The administrative law judge further concludes that these benefits must be recovered in accordance with the provisions Iowa law.

DECISION:

The representative's decision dated February 20, 2004, reference 01, is reversed. The claimant, Lisa K. Wisner, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits. She has been overpaid unemployment insurance benefits in the amount of \$2,400.00.

kjf/b/b