

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

---

**CORI J LONG**

Claimant

and

**BOONE COUNTY HOSPITAL**

Employer

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

**HEARING NUMBER: 21B-UI-03389**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

Cori Long (Claimant) worked for Boone County Hospital (Employer) as a part-time receptionist from September 30, 2019 until she was fired on October 20, 2020. Claimant's immediate supervisor was Amy Laube. Claimant was discharged by Ms. Laube and HR Administrator Kim Schwartz.

The most recent incident leading to discharge occurred on October 13, 2020. On that date, the Claimant accessed the records of two deceased former patients without authorization to do so. Employer became aware of the incident on October 18, 2020, when it was notified of a potential HIPAA violation by McFarland Clinic. Claimant and others had access to McFarland's system in order to schedule patients, complete check-ins, retrieve documents for providers, and so on.

When questioned by the Employer, the Claimant asserted that she accessed the records because a coworker whom she was assisting in training asked a question about how the record of a deceased patient appears in the McFarland system. Claimant told the Employer that she was unsure of the answer to the question and so accessed the records of two patients she knew had recently died in order to educate herself on how those records appear in the system. Claimant was in the records for several minutes, and had taken several steps in order to view different pages in the charts.

Ms. Laube interviewed the Claimant's coworkers and they all denied asking Claimant about how the record of a deceased patient appears. The Employer's records establish that the coworker who was identified by the Claimant as having asked the question did not work on October 13, 2020, because she was on paid time off and sick time for that day. The Claimant claims no other business reason for accessing the records.

The greater weight of the credible evidence establishes that Claimant had no business reason for accessing the records. Further, the greater weight of the credible evidence establishes that the Claimant had no good faith reasonable belief that she had a business reason for accessing the records.

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

Iowa Code Section 96.5(2)(a) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

It is the duty of the Board as the ultimate trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Board, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, as well as the weight to give other evidence, a Board member should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what evidence to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence the Board believes; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). The Board also gives weight to the opinion of the Administrative Law Judge concerning credibility and weight of evidence, particularly where the hearing is in-person, although the Board is not bound by that opinion. Iowa Code §17A.10(3); *Iowa State Fairgrounds Security v. Iowa Civil Rights Commission*, 322 N.W.2d 293, 294 (Iowa 1982). The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence considering the applicable factors listed above, and the Board's collective common sense and experience. We have found credible the Employer's evidence that all the Claimant's co-workers denied that they had asked her the question which the Claimant claims prompted the accessing of the records. Further, we find credible the Employer business records which show that the worker whom the Claimant identified as the inquisitor, did not work that day. Given that we find this evidence credible, we find incredible the Claimant's story for why she accessed the records. Furthermore, the fact that the Claimant related this incredible justification both to the Employer and at hearing, bolsters our conclusion that she in fact had no good faith belief that she had legitimate reasons for accessing the records.

Given our weighing of the evidence the conclusion of misconduct is not difficult. For reasons of her own the Claimant violated HIPAA regulations. She was trained on them, as she admitted. The Employer has proven she had no business reason, and had no good faith belief of any such reason. We find that the Employer has proven by a preponderance that the Claimant intentionally disregarded the HIPAA regulations when she knew better, and that in so doing she showed a 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.

The Employer submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Employer was not presented at hearing. Accordingly, none of the new and additional information submitted has been relied upon in making our decision, and none of it has received any weight whatsoever, but rather all of it has been wholly disregarded.

**DECISION:**

The administrative law judge's decision dated March 15, 2021 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, she is denied benefits until such time the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(2)(a).

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on this decision.

---

James M. Strohman

---

Myron R. Linn

RRA/fnv