

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MEGAN L MOORMAN**  
Claimant

**APPEAL 17A-UI-07231-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EARLY OUT SERVICES INC**  
Employer

**OC: 06/11/17  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 10, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 3, 2017. Claimant participated personally and was represented by attorney Christopher D. Spaulding. Employer participated through vice president of employee services, Cheryl Pignotti and operations supervisor, Miguel Barajas. Employer's Exhibits 1 and 2 were received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 29, 2016. Claimant last worked as a full-time customer care representative. Claimant was separated from employment on June 9, 2017, when she was terminated.

Employer provides accounts receivable services for healthcare providers. Employer has a policy prohibiting releasing protected health information to unauthorized individuals. Employees are required to confirm the identity of the person they are speaking to on the phone before disclosing protected health information. Claimant was aware of the policy.

On June 7, 2017, claimant placed on outbound call to an individual who has an outstanding bill with one of employer's clients. Claimant did not confirm the identity of the person she was speaking to prior to disclosing protected health information regarding the individual she was attempting to call. The incident came to operations supervisor Miguel Barajas' attention.

Claimant was terminated on June 9, 2017.

Claimant had been previously warned on three occasions within the prior six months regarding similar conduct.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the

carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant performed her job without incident until January 2017. Thereafter, claimant was issued three warnings regarding the unauthorized release of protected health information. Claimant then released protected health information on June 7, 2017, to an individual without first confirming her identity.

Claimant’s repeated failure to accurately perform her job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. Employer has established claimant was terminated for misconduct.

**DECISION:**

The July 10, 2017, (reference 01) unemployment insurance decision is affirmed. 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.

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Christine A. Louis  
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Decision Dated and Mailed

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