

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NICOLE M HARRISON**  
Claimant

**THE UNIVERSITY OF IOWA**  
Employer

**APPEAL 17A-UI-08391-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/16/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 10, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 5, 2017. Claimant participated. Employer participated through senior benefits specialist Mary Eggenburg and nurse manager Amy Sanborn. Employer Exhibit 1 was admitted into the record with no objection. Official notice was taken of the administrative record, including claimant's benefit payment history, weekly continued claims filing history, and claimant's wage history, with no objection.

**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 was employed part-time as a staff nurse (claimant was a registered nurse) from July 8, 2013, and was separated from employment on June 28, 2017, when she was discharged. Claimant was discharged for violating the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and improper narcotic administration.

The employer has a written policy/procedure for dispensing medication that requires staff nurses to scan a patient's arm band when dispensing all medication, including narcotics. The staff nurse is also required to open the medication beside the patient's bed. The policy provides that employees may be disciplined, up to and including discharge, for violating this policy. Claimant was also aware of HIPAA and the employer's policy that prohibits nurses from accessing a patient's medical record that they are not providing care for. The employer also provides its nurses annual training on patient privacy. The employer's policy provides that employees may be disciplined, up to and including discharge, for violating this policy. Claimant was aware of the policies.

On June 10, 2017, claimant did not properly scan and administer a narcotic medication for a patient. Claimant would access a patient's medication outside the patient's room by printing an

additional label that was like the label on the patient's arm band that identifies the patient. By printing this label, it allowed claimant to gain access to the patient's medication without having to enter the patient's room and scan the patient's arm band. On June 10, 2017, claimant printed off a label for a patient, scanned the label outside the patient's room, accessed the patient's medication outside the patient's room, entered the patient's room, and then gave the medication to the patient. A nurse discovered what claimant was doing when the nurse found empty medication packages in the waste basket at the front desk and one was for a narcotic. Claimant testified she was not sure of the date that this happened, but she admitted it did happen. Claimant testified she believes she did this practice with more than one patient.

On June 12, 2017, during claimant's scheduled shift, she improperly accessed two adult male patient records. Claimant admitted to accessing the patient records even though she had no medical reason to access them. Because of the department claimant worked in, she never needed to access any adult male patient records. Claimant does not recall accessing any other patient records improperly. One of the adult male patient records that claimant accessed was the father of a NICU baby. Claimant had previously provided care for the NICU baby. Claimant did not provide any care for the father, but she accessed the father's patient records, which included his sexual history. Claimant also accessed a patient record of an adult male friend of hers. Claimant was not providing care for this adult male either. Claimant was aware that the employer tracks who accesses a patient's records.

On June 19, 2017, Ms. Sanborn read an e-mail from a staff nurse regarding improper narcotic administration and possible HIPAA violations committed by claimant. Ms. Sanborn told claimant she was suspended with pay pending an investigation about concerns that were brought to her attention. The employer then conducted an investigation. The employer looked at the computer records and confirmed that claimant had accessed multiple adult male patient records that she was not providing care for and she had printed off patient labels and scanned them at a computer outside of the patient's room. The employer had a series of meetings with claimant regarding her actions. During the meetings, claimant admitted to violating HIPAA when she accessed the two adult males' patient records. Claimant also admitted to improperly administering medication to a patient. On June 28, 2017, the employer discharged claimant for violating patient privacy, HIPAA, and improper narcotic administration. Employer Exhibit 1.

Claimant did not provide any written documentation from her psychiatrist or doctor stating her medication affected her judgment on June 10 and 12, 2017. Claimant was not under any work restrictions due to her medication.

Claimant does not have other full- or part-time employment in the base period and has not requalified for benefits.

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

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

Iowa Code section 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 disqualification shall continue 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).

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).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's work rule requiring staff nurses to follow its procedures when dispensing medication is reasonable. The employer's work rule requiring staff nurses to follow HIPAA and its rules regarding patient privacy is also reasonable. Workers in the medical or dependent care profession, reasonably have a higher standard of care required in the performance of their job duties. That duty is evident by special licensing requirements. Claimant was a registered nurse and was aware of HIPAA and the employer's policies. Claimant's testimony that her medication affected her judgment on June 10 and 12, 2017, is not persuasive. Claimant failed to provide any written documentation from her psychiatrist or a doctor that her medication affected her judgment. Furthermore, claimant was not under any work restrictions due to her medication.

The employer presented substantial and credible evidence that claimant improperly administered medication to at least one patient. Claimant admitted to not following the employer's policy for dispensing medication on June 10, 2017, when she deliberately printed off an additional label for a patient to allow her to access the patient's medication when she was

outside of the patient's room. Claimant's conduct was clearly against the best interest of the employer and its patient.

The employer also presented substantial and credible evidence that claimant violated patient privacy, HIPAA, and the employer's policy when she accessed two adult male patient records for no medical reason. The employer is charged by law to protect the privacy of its patients' records. Ms. Sanborn credibly testified that the employer confirmed through computer records that claimant accessed more than one adult male's patient records. Ms. Sanborn's testimony was corroborated by claimant's admission that she accessed two adult male patient records and that she was not providing medical care for them.

The employer has presented substantial and credible evidence that claimant was acting against the best interests of the employer and its patients by accessing the two adult male patient records and improperly administering medication. This is misconduct without prior warning. Benefits are denied.

Since claimant has not requalified for benefits since the separation and is not otherwise monetarily eligible according to base period wages, benefits are denied until she requalifies and is otherwise eligible for benefits.

**DECISION:**

The August 10, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Jeremy Peterson  
Administrative Law Judge

---

Decision Dated and Mailed

jp/rvs