

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD F WEMETT
Claimant

APPEAL NO. 10A-UI-07610-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HEARTLAND EMPLOYMENT
SERVICES LLC**
Employer

OC: 04/25/10
Claimant: Appellant (2)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Donald Wemett filed a timely appeal from the May 18, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 13, 2010. Mr. Wemett participated personally and was represented by Attorney Emilie Roth Richardson. Zack Johnson, Business Manager and Human Resources Representative, represented the employer and presented additional testimony through Laura Van Holtem, Regional Manager of Business Development.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Donald Wemett was employed by Heartland Employment Services as a full-time account liaison from June 2009 until April 7, 2010, when Laura Van Holtem, Regional Manager of Business Development, discharged him for allegedly violating patient confidentiality. Ms. Van Holtem was Mr. Wemett's immediate supervisor. Mr. Wemett's duties centered on developing and sustaining relationships with agencies that might be in a position to refer patients for hospice care. On April 6, 2010, Mr. Wemett referenced at a staff meeting that he had recently found a way to overcome a particular patient's reluctance to consider hospice care. The patient in question was a priest associated with the church Mr. Wemett's family attended. Mr. Wemett had mentioned to his uncle in the context of a family gathering that he had come across the priest's name and did not know much about him. Mr. Wemett did not mention to his uncle how or why he had come across the priest's name and did not say anything to indicate his interest in the priest was related to his work. Mr. Wemett learned that his uncle was familiar with and highly regarded the priest. Even after the uncle provided this information, Mr. Wemett did not disclose to his uncle his interest in the priest. The employer erroneously concluded that Mr. Wemett had disclosed information about the priest's medical circumstances.

REASONING AND CONCLUSIONS OF LAW:

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly

be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence establishes that Mr. Wemett did not disclose confidential information about the patient in question. Mr. Wemett neither violated any HIPAA regulation nor violated any employer confidentiality policy. The evidence indicates instead that Mr. Wemett exercised appropriate judgment and discretion while pursuing information about the patient so as to better serve the patient, perform his assigned duties, and serve the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Wemett was discharged for no disqualifying reason. Accordingly, Mr. Wemett is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Wemett.

DECISION:

The Agency representative's May 18, 2010, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw