

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KARRIE A RICE**  
Claimant

**APPEAL NO: 13A-UI-13410-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA PHYSICIANS CLINIC MEDICAL**  
Employer

**OC: 02/24/13  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's November 26, 2013 determination (reference 03) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the December 30 hearing. Susan Mikles, the human resource business partner, and Rick Newlon appeared on the employer's behalf. During the hearing Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2007. She worked as a full-time clinical nurse. When the claimant started her employment, she received a copy of the employer's corrective action regarding breaching patient protected health information, which includes health plan beneficiary numbers. (Employer Exhibit One.) The claimant acknowledged that she understood the importance of safeguarding patient information. The employer's policy also states that staff members should not access patient information unless they have a need to know the information to perform their duties. (Employer Exhibit Two.)

The employer's policy considers three types of violations. These are carelessness or inadvertence, failure to follow policy or access for no personal gain, and for personal gain or malice. The employer's policy informs employees they will be discharged the first time they access patient information for personal gain or malice. (Employer Exhibit One.)

The employer recently received a complaint that the claimant accessed information that violated the employer's policy. Based on this complaint, the employer investigated and discovered the claimant violated the employer's policy by accessing two patients' records between 2008 and 2011.

The records the claimant accessed involved her ex-husband and his current wife. In accordance with their divorce, the claimant's ex-husband is required to provide health insurance for their children. He would not provide this information to the claimant. Since he is self-employed, his current wife covers the children under her health insurance policy that is provided by her employer. The claimant accessed their records to find out the insurance provider to give to medical providers that treated her children. The claimant accessed the records several times between 2008 and 2011 because her ex-husband's wife changed jobs.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

After discovering the claimant accessed these records more than a dozen times between 2008 and 2011, the employer concluded the claimant had done this for personal gain. While it was a hassle to take her ex-husband to court to obtain insurance information for her children, the claimant basically decided to circumvent the court system and obtain insurance information because she had access to it. While, it is unfortunate that the claimant's ex-husband and current wife do not willingly provide insurance information for the children, but the claimant's decision to access protected patient information establishes a deliberate violation or disregard of the standard of behavior the employer has a right to expect from the claimant.

Even though the claimant had not accessed patient information since 2011, the employer did not learn about this violation until just recently. After the employer learned about the claimant's violations, she was discharged. The employer established the claimant was discharged for a current act of work-connected misconduct.

The claimant's assertion that her ex-husband's wife had a plan to get her discharged may be true. But the claimant is the person who accessed records she had no authority to access. As of November 3, 2013, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's November 26, 2013 determination (reference 03) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 3, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs