

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAIME S RIDENOUR
Claimant

APPEAL 19A-UI-01767-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SEQUEL YOUTH SERVICES OF
WOODWARD**
Employer

**OC: 01/20/19
Claimant: Respondent (1)**

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
Iowa Admin. Code r. 871-24.32 – DM – Discharge for misconduct

STATEMENT OF THE CASE:

Sequel Youth Services of Woodward, Employer, filed an appeal from the February 21, 2019 (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 13, 2019 at 9:00 a.m. Claimant participated. Employer participated through Marcia Dodds, Human Resources Director, and Tonna Lawrenson, Clinical Director. Employer's Exhibits 1 – 5 were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a records clerk from January 7, 2009 until her employment with Sequel Youth Services of Woodward ended on January 28, 2019. (Dodds Testimony) Claimant's direct supervisor was Tonna Lawrenson. (Dodds Testimony) Claimant's schedule was Monday through Friday from 8:00 a.m. until 4:00 p.m. (Dodds Testimony)

Employer has a Health Insurance Portability and Accountability Act (HIPAA) compliance policy in its employee handbook. (Dodds Testimony) The policy states that a violation may result in disciplinary action up to and including termination. (Dodds Testimony) Claimant received a copy of the handbook and was aware of the policy. (Claimant Testimony) Claimant also received training on HIPAA. (Lawrenson Testimony)

On January 17, 2019, claimant requested records for one of employer's residents from a county in the State of Texas. (Lawrenson Testimony) Claimant made the request using the county's website. (Dodds Testimony) Claimant's request listed the resident's name and date of birth and stated that resident was enrolled with employer. (Lawrenson Testimony) On January 23, 2019 or January 24, 2019, the county brought the request to employer's attention and notified employer that claimant's request on the county website is accessible by the public. (Dodds Testimony; Lawrenson Testimony) Employer investigated the incident. (Dodds Testimony) During the investigation, employer presented claimant with a screen shot of the county's website and asked claimant if she had visited the site. (Claimant Testimony) Claimant did not recognize the screen shot and denied accessing the site. (Claimant Testimony) Employer terminated claimant's employment on January 28, 2019 for violation of the HIPAA compliance policy and untruthfulness during the employer's investigation. (Dodds Testimony; Lawrenson Testimony)

Claimant has received no prior warnings for violating HIPAA. (Lawrenson Testimony) Claimant was trained to request information via facsimile or email, but if contact information was not available, to request it online. (Claimant Testimony) When claimant requested the information online, she did not know that the information she provided would be accessible by the public. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66

(Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge, as the trier of fact, 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 administrative law judge 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, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's testimony credible.

Claimant's disclosure of protected information on January 17, 2019 was not a result of a material breach of the duties and obligations claimant owed to employer. The disclosure was not deliberate. Claimant was not willfully or wantonly disregarding employer's interests when the disclosure was made; claimant was performing her job duties as she had been trained. Notwithstanding the HIPAA training claimant received, she had no prior warnings for HIPAA violations. Employer has not met its burden of proving disqualifying, job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed. Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot

DECISION:

The February 21, 2019 (reference 02) unemployment insurance decision is affirmed. Benefits are allowed provided claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319-0209
Fax: 515-478-3528

Decision Dated and Mailed

acw/rvs