

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**RHONDA R CARMICHAEL**  
Claimant

**PELLA REGIONAL HEALTH CENTER**  
Employer

**APPEAL 14A-UI-05838-G**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/11/14**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 30, 2014, (reference 01) decision that denied benefits because of a finding that claimant was discharged for misconduct. After due notice was issued, a hearing was held on August 19, 2014, in Des Moines, Iowa. Claimant participated and was represented by Attorney Melissa C. Hasso. Employer participated through Attorney Emily S. Pontius.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 13, 2014.

Employer discharged claimant on May 13, 2014 because the employer found evidence that claimant was viewing confidential medical records of patients that she was not currently assigned, and during times when she was not at the hospital. Employer has a policy that restricts Patient Care Technicians from viewing electronic medical records of patients unless they are assigned to care for that patient, and they are at work providing current care for that patient. Employer's policy was established in an effort to comply with the Health Insurance Portability and Accountability Act, commonly referred to as HIPAA. Claimant received training from employer every year by reviewing a power point presentation that gave instruction and guidance in relation to this policy.

Claimant's job included some on-call work depending on the number of patients on her floor. She heard from other employees that the hospital's database could be accessed from a home computer. Claimant contacted employer's computer technology department and received assistance in having the software installed on her machine so she could access that information at any time.

Claimant commuted to work, and found it helpful to know whether she might be needed for work the next day. Claimant had made the long commute to work on prior occasions only to find that she was not needed. Claimant could tell from the number of patients on the floor whether she would have to work that day which saved her time and money.

Claimant thought she was using the information for an allowable work related purpose. She never shared the information with others, and did not think she was violating HIPAA or the hospital's policies. She also accessed patient records for patients she was not technically assigned to because the staff helped each other with patient care for any patient on their floor, and she accessed information about patients that were being transferred from another department of the hospital to her floor. Claimant was never told she was not allowed to use the hospital's computer system for these purposes.

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

Iowa Code § 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.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. 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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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). 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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990); however, "Balky and argumentative" conduct is not necessarily disqualifying. *City of Des Moines v. Picray*, (No. \_\_\_-\_\_\_, Iowa Ct. App. filed \_\_\_, 1986).

The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand witness reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer, and thus it has not met its burden of proof that claimant was viewing patient records for frivolous reasons not related to work. It is permissible to infer that the records were not submitted because they would not have been supportive of claimant's position.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

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 assess points or impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately, or after prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning the privacy of patient medical records. Claimant was not warned that her conduct was in violation of that policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant was never warned that what she was doing was in violation of the employer's rules or policies. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is qualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated May 30, 2014, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/pjs