

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE N HILLS
Claimant

APPEAL NO. 08A-UI-00792-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCFARLAND CLINIC PC
Employer

**OC: 12/16/07 R: 01
Claimant: Appellant (1)**

Iowa Code section 96.6(2) – Timeliness of Appeal
Iowa Code section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Stephanie Hills filed an appeal from the January 4, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on February 7, 2008. Ms. Hills participated personally and was represented by Attorney Robert Peters. Matt Franco, Human Resources Director, represented the employer and presented additional testimony through Supervisor Jody Miller, Office Manager Melissa Lesle, and Mary Ness, McFarland Clinic Medical Records Service Director and Privacy Officer. Department Exhibits D-1 and D-2 and employer Exhibits One and Two were received into evidence.

ISSUES:

Whether the claimant's appeal was timely.

Whether there is good cause to deem the claimant's late appeal timely.

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The January 4, 2008, reference 01, decision was mailed to Stephanie Hills' last-known address of record on January 4, 2008. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 14, 2008. Ms. Hills did not receive the decision until January 17, 2008, after the deadline for appeal had passed. Ms. Hills drafted an appeal on January 18, 2008. Ms. Hills submitted her appeal by mail. The envelope in which the appeal arrived bears a legible January 21, 2008 postmark.

Stephanie Mills was employed by McFarland Clinic as a phlebotomist from April 27, 2004 until December 13, 2007, when Matt Franco, Human Resources Director, Melissa Lesle, Carroll Clinic Office Manager, and Mary Ness, McFarland Clinic Medical Records Service Director discharged her for violating the employer's patient confidentiality policy. Ms. Hills worked at the

employer's clinic in Carroll. Ms. Hills became a full-time employee of McFarland Clinic in January 2006.

On December 10, 2007, lab employee Kim Kelly notified Jodi Miller, Supervisor of Patient Care, that Ms. Hills was using the McFarland Clinic computer(s) to access the St. Anthony Hospital Meditech patient information database to satisfy her interest in and share personal information about patients. Ms. Hills needed a secure username and password to access the database. Ms. Hills had previously been employed by St. Anthony Hospital and had received access to the database for use in that employment. Ms. Hills' access to the database had not been terminated when her employment at St. Anthony Hospital had ended. Ms. Hills had not requested permission from St. Anthony Hospital or McFarland Clinic to continue to access the St. Anthony Hospital database in connection with her McFarland Clinic employment. During the McFarland Clinic employment, Ms. Hills accessed the hospital's database a limited number of times to gain information that would assist her or other McFarland Clinic employees in performing their duties. However, most of the times Ms. Hills accessed the hospital's database Ms. Hills was motivated by her interest in and desire to share personal information about patients for non-work-related purposes. The information Ms. Hills obtained for non-work-related purposes included but was not limited to information regarding births and deaths.

When Ms. Miller received the report from Ms. Kelly, Ms. Miller notified her own supervisor, Office Manager Melissa Lesle. Ms. Lesle directed Ms. Miller to contact St. Anthony Hospital to request an audit of Ms. Hills' usage of the hospital database via McFarland Clinic computers. Ms. Miller contacted St. Anthony Hospital Information Technology Director Randy Eischeid, who generated a record of Ms. Hills' access from September 11 to December 10, 2007. Ms. Miller and Ms. Lesle also contacted Mary Ness, McFarland Clinic Medical Records Service Director and Privacy Officer. The employer reviewed the audit material provided by Mr. Eischeid and concluded that most of the accessed information fell outside Ms. Hills' work duties. The audit report indicates that Ms. Hills regularly accessed the hospital's patient information database several times a day.

McFarland Clinic has a confidentiality policy concerning Protected Health Information (PHI) concerning its patients. The written policy covers electronic and written information. The purpose of the policy is to preserve patient trust in McFarland Clinic and to comply with applicable law. Under the policy, Ms. Hills was to access Protected Health Information only as required for the performance of her job duties, and then only to access the patient information that was absolutely necessary to accomplish her job duties. The policy covered any source of patient information. Ms. Hills signed her acknowledgment of the policy on March 29, 2007.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the

burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). See also Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b). The appeal in matter was filed on January 21, 2008, the date that appears on the postmark.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

The evidence indicates that Ms. Hills was denied a reasonable opportunity to file an appeal before the deadline because she did not receive the reference 01 decision until after the deadline had expired. The evidence indicates that once Ms. Hills received the decision, she promptly drafted an appeal and filed it within four days. The evidence establishes that the late appeal was caused by delay or other action of the United States Postal Service. There is good

cause to deem the appeal timely. See 871 IAC 24.35(2). The administrative law judge has jurisdiction to rule on the merits of the appeal.

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 greater weight of the evidence in the record establishes that Ms. Hills knowingly violated McFarland Clinic's Protected Health Information policy by routinely using McFarland Clinic computers to access confidential patient information to satisfy her curiosity and to share the information with other McFarland Clinic staff. The evidence indicates that Ms. Hills was on notice of the sensitive nature of patients' personal medical information and her obligation to respect patient confidentiality by restricting her own access to such information. Ms. Hills was on notice by virtue of the fact that her access to the information required a username and password. Ms. Hills was on notice by virtue of the McFarland Clinic Confidentiality Statement she signed on March 27, 2007. There is no way Ms. Hills could work in the medical environment as long as she did without being fully exposed to established standards concerning the confidentiality of patients' personal and private medical information. The bulk of Ms. Hills' Meditech access was for non-work-related purposes. Ms. Hills' assertion at the appeal hearing that her conduct was all work related is at odds with the statements Ms. Hills made during the fact-finding interview. At the fact-finding interview, Ms. Hills indicated she had accessed the hospital database to obtain information about McFarland Clinic patients who had died or given birth and that only "some" of the access was work related. At the fact-finding interview, Ms. Hills also indicated, "I did not think it was a big deal." Though Ms. Hills has provided testimony inconsistent with her prior statement to Iowa Workforce Development, Ms. Hills' prior statement is consistent with the testimony the employer provided, that Ms. Hills admitted to using the Meditech system to learn about births and deaths to satisfy her personal, non-work-related interests. The administrative law judge concludes that the employer's testimony is more credible than the testimony provided by Ms. Hills. Ms. Hills knowingly acted with willful and/or wanton disregard of the employer's interests and in violation of standards the employer reasonable expected of its employees.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Hills was discharged for misconduct. Accordingly, Ms. Hills is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Hills.

DECISION:

The claimant's appeal is deemed timely. The Agency representative's January 4, 2008, reference 01, decision is affirmed. The claimant was discharged for misconduct in connection

with the employment. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount, provided she is otherwise eligible. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs