

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAY S VANDEKAMP
Claimant

IOWA HOME CARE LLC
Employer

APPEAL 16A-UI-13488-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/20/16
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 12, 2016, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on January 13, 2017. Claimant participated personally and was represented by attorney Erik Bair. Employer participated through chief clinical officer Tina Coleman, marketing director Charles Ganske, branch manager Cheryl Dean, and network technician Clint Myer, and was represented by attorney Margaret Hanson. Employer's Exhibits 1 through 5 were received. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on November 16, 2012. Claimant last worked as a field nurse. Claimant was separated from employment on November 21, 2016, when she was terminated.

Employer administers health care services to clients. Employer has a confidentiality policy statement. It informs employees that client information is confidential and that any violation of client confidentiality, whether intentional or unintentional, may result in termination. Claimant signed the policy statement. Claimant also signed an "Acknowledgement of Information Technology Policies Electronic Device Safety & Security and Electronic Signatures" in which she agreed to be held accountable for any security violation or breach of confidentiality with respect to user identification or passwords.

Claimant was issued a company cell phone to perform her job functions. When claimant was issued the phone, she signed a document stating cell phones are for business use only and that no other individuals should access the phone or know the key code to the phone.

In approximately June 2016, claimant reported she had difficulty accessing the Internet on her company issued phone, which was required for her job duties. Employer provided claimant with

a second phone. The newly issued phone contained clients' confidential medical information. The phone was locked with a password. Claimant did not return the first phone she had been issued and kept both phones in her possession.

Claimant allowed her daughter to use the second company issued phone and gave her daughter access to the password to the phone. The daughter accessed the phone. Claimant and her daughter sent personal text messages between the two company phones.

In early November 2016, employer obtained the two phones so the information on each phone could be combined onto one phone. On November 11 or 12, 2016, network technician Clint Myer reviewed the phones and noticed text messages had been sent between the two company phones. The conversations were of a personal nature, and employer concluded claimant had allowed a third party to access and use a company issued phone. Myer brought the information to branch manager Cheryl Dean's attention. Dean and Myer thoroughly reviewed the phones. Dean consulted with other management level employees.

On November 21, 2016, employer terminated claimant's employment for violation of its client confidentiality and cell phone policies.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

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 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *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).

In this case, claimant gave a third party access to her company phone and its password. The third party used the phone for personal reasons. The phone contained clients' confidential medical information. Workers in the medical or dependent care profession, reasonably have a higher standard of care required in the performance of their job duties. That duty is evident by special licensing requirements. As a licensed professional, claimant was aware of the employer's interest in and her own duty to protect the confidentiality of clients' medical information. Claimant's actions were in deliberate disregard of that interest. This is misconduct even without prior warning.

DECISION:

The December 12, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant is deemed eligible.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Decision Dated and Mailed

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