

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PATTY A MEYER
Claimant

MERCY MEDICAL CENTER
Employer

APPEAL 16A-UI-07844-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/19/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 11, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 4, 2016. The claimant participated personally. The employer participated through Christine Gust, human resources generalist. Les Eischeidt, director of environmental services, and Laura Dooley, human resources director, also testified for the employer. Claimant exhibit A was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed full-time as a housekeeper and was separated from employment on June 23, 2016, when she was discharged.

As a medical facility, the employer is required to comply with the Health Insurance Portability and Accountability Act (HIPAA). HIPAA has restrictions on access to medical records and other provisions to insure patients' privacy and confidentiality are protected. At the time of hire, the claimant was made aware of the employer's policies and procedures, including HIPAA, its disciplinary process, electronics policy which expressly prohibits use of taking photographs of the premises without prior permission. The employer also required the claimant to take multiple courses during employment with regard to confidentiality, safety, HIPAA, use of electronics, and other employer policies. The employer also had a policy which stated that certain offenses would be grounds for immediate discharge, including violations of confidentiality, safety policies and unauthorized use of electronic devices.

The final and only incident that triggered the claimant's discharge occurred on June 14, 2016. The claimant worked the evening shift, and was assigned to the employer's cancer/chemotherapy center, which was closed in the evenings. Around 10:00 p.m., the director of environmental services, Lee Eischeidt, received an email from an ex-employee, Mike Doyle, with an attached photograph (Claimant exhibit A). It referenced being happy that he no longer worked for the employer and the photograph depicted a portion of the claimant's cleaning area where chemotherapy medical/waste/biohazards and boxes were stored until removal. Mr. Doyle did not have access to the facility without help from an employee.

The employer questioned the claimant the next day, who stated she had allowed Mr. Doyle access to the building and to take the photograph. She said the photograph was taken because she was upset with the waste stacking up and had reportedly made the employer aware of her concerns to no avail. The claimant had the options of going through the chain of command or reporting concerns anonymously on a compliance hotline. The compliance hotline number was attached to the claimant's work badge, for easy access.

At the hearing, the claimant stated she had not actually let Mr. Doyle into the building, but rather took the photograph herself, and sent it to Mr. Doyle, because she was frustrated with the employer. The claimant acknowledged she lied to the employer because she thought it would lead to a better outcome for her. The employer reported that the claimant's own photographing of the premises and sending it to an ex-employee would be violation of the employer's policies. She was subsequently discharged.

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).

It is the duty of the administrative law judge as the trier of fact in this case, 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 believable evidence; 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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The claimant worked in a medical facility, which required compliance with federal HIPAA laws, as well as enhanced provisions to protect the privacy, confidentiality and safety of both patients and employees. The claimant was made aware of this policy, as well as the employer's policies, which prohibit photographs of the premises without permission, at the time of hire and through reoccurring training throughout employment. The claimant admitted at the hearing she lied to the employer during investigation, with regard to allowing ex-employee, Mike Doyle, on to the premises, and allowing him to photograph the room chemotherapy medical/waste/biohazards and boxes were stored. Had she allowed him to enter the premises and photograph it, as she purported, she would have violated employer policy. Had the claimant taken the photographs and sent them to Mr. Doyle (who then sent them to Mr. Eischeidt) as she stated was the actual case, she still would have been subject to discharge for violating the employer's electronics and confidentiality policies. Further, the claimant's lying during an investigation to the employer would be grounds for immediate discharge. Based on the evidence presented, the claimant knew or should have known her conduct was contrary to the reasonable policies and expectations an employer has the right to expect of its employees. Misconduct has been established. Benefits are denied.

DECISION:

The July 11, 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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs