

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIE L BENNETT
Claimant

APPEAL NO. 09A-UI-00723-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE IOWA CLINIC
Employer

OC: 12/07/08
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Marie Bennett (claimant) appealed a representative's January 8, 2009 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with The Iowa Clinic (employer) for conduct not in the best interests of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for March 10, 2009, in Des Moines, Iowa. The claimant was represented by James Ballard, Attorney at Law, and participated personally. The employer participated by Kathryn Johnson, Human Resources Director; Julie Sander, Director of Quality; and Deann Sheppard, Department Manager. The employer offered and Exhibit One was received into evidence. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the 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 that: The claimant was hired on September 12, 2007, as a full-time receptionist. The claimant had access to the employer's intranet handbook. The claimant signed for receipt of the employer's Confidentiality of Patient and Corporation Information policy on September 12, 2007. The claimant completed her annual training on confidentiality and HIPAA on September 24, 2008. To perform her job duties the claimant must access electronic files to complete Family Medical Leave Act and disability forms. The claimant also accesses patient files for insurance companies. The claimant was never instructed to document each access with a reason for the access. The employer did not issue the claimant any warnings during her employment.

On July 31, 2008, the claimant's supervisor and the department manager sent e-mails to each other. The department manager told the claimant's supervisor to "nail her ass to the wall," referring to the claimant. The claimant understood this to mean the employer wanted to terminate her.

On November 25, 2008, the claimant complained to the employer about her supervisor. The employer sent the claimant home with pay until further notice. On or about December 1, 2008, the employer received a Report of Concern from an unknown employee stating the claimant discussed patients with co-workers. The employer did an audit and discovered the claimant electronically accessed three folders in a file on November 5, 2008, of a patient that did not appear for an appointment on November 5, 2008. The claimant told the employer it may have been a patient spelling error. The employer terminated the claimant for using or disclosing patient information. The employer was unaware of whether the claimant used or disclosed the information to any one.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not provide any names or witnesses to prove the

claimant used or disclosed confidential information. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 8, 2009 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css