

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLI CORMAN
Claimant

APPEAL NO: 12A-UI-03669-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREAT RIVER MEDICAL CENTER
Employer

OC: 03/04/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Kelli Corman (claimant) appealed an unemployment insurance decision dated April 3, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Great River Medical Center (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2012. The claimant participated in the hearing. The employer participated through Cara Sanders, director of human resources, and Lisa Hoppe, director of nursing opportunities. Employer's Exhibits One through Five and Claimant's Exhibit A were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant is a registered nurse and was employed full-time from March 9, 1998 through February 23, 2012, when she was discharged for a HIPAA violation. She was hired as an ICU staff nurse but was the nursing house supervisor at the time she was fired. The HIPAA Privacy Rule, or Standards for the Privacy of Individually Identifiable Health Information, issued by the Department of Health and Human Services implements the requirement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). It establishes national standards for maintaining the confidentiality of protected health information (PHI); which effectively prohibits the release of that information without the patient's express written permission, except as provided by law. The employer's HIPAA: Access to Electronic Protected Health Information policy provides that clinical professional staff are permitted access to the ePHI based upon the "need to know" as defined in their job descriptions. The claimant had taken HIPAA training and the most recent training was completed on August 24, 2011.

The claimant worked the night shift on February 14, 2012 and, at some point after 8:00 p.m., she learned that an OB nurse who was working had found a replacement and left. This employee had not reported her absence to the claimant. The claimant learned the nurse had gone to the

Emergency Department for treatment. The nurse who was now working in the OB Department had been the nurse on call so the nurse that left was now listed as the on-call nurse, although there were other employees that have helped before. There was no need to call in additional staff that night.

At 3:44 a.m., the claimant was in the OB Department when she used one of their computers to access the medical records of the nurse who went to the Emergency Department for treatment. This nurse was not the claimant's patient and the claimant had no need to know what was contained within the nurse's records. The hospital's computer system keeps track of who accesses what records and what time they are accessed. The claimant accessed seven different medical records that were prepared as a result of the nurse's emergency room visit. She then relayed that information, which included the medications the nurse received, in a telephone message to the OB Supervisor. The claimant's rationale was that if this nurse had been called in for duty, and had chosen to report to duty, it was essential to know whether or not she had been given medications that would impair her ability to work.

The OB Supervisor came in the next morning and requested an audit of who accessed the OB nurse's medical records after it was discovered that her co-employees were aware of the nurse's medical treatment. Clinical Information System Manager Jackie Welch, who is the claimant's mother, ran the report and told the claimant that her name was on the report. When the supervisor asked Ms. Welch if any OB staff accessed the nurse's records, Ms. Welch said no OB staff accessed the records but failed to disclose that her daughter had. After the claimant learned that her name was on the audit report, she left a voice mail for her own supervisor, again disclosing private medical information. The OB Supervisor subsequently questioned the employees in that department as to how they were aware of the nurse's medical information and they reported that the claimant had told them, although the claimant denies this allegation.

The claimant received a previous warning on April 5, 2007 for a HIPAA violation after she shared an employee's private health information with staff in the Emergency Department while working as Shift Supervisor. The claimant disagreed with the warning and denied any wrongdoing. She testified in the hearing that she effectively grieved the warning and it was supposed to be removed from her personnel records. The employer had no knowledge of her allegations and there was no indication in the claimant's personnel records that the warning was to be removed.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on February 23, 2012 for a second HIPAA violation. She denies all wrongdoing and claims that she was protecting the hospital, but her claims lack merit. At the time she accessed the nurse's medical records, the claimant had no need to know what was contained within them. If the OB Department needed more employees and if this nurse was called in to work and if this nurse agreed to report to work, only then might there be a need to know, but those conditions did not exist. The fact that the claimant continues to justify her actions is almost as troubling as the violation itself. Her violation of this federal confidentiality law shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 3, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw