

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TANYA J LAWIN
Claimant

IOWA PHYSICIANS CLINIC MEDICAL
Employer

APPEAL 19A-UI-01643-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/27/19
Claimant: Appellant (2)

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32 – DM – Discharge for misconduct

STATEMENT OF THE CASE:

Tanya Lawin, Claimant, filed an appeal from the February 15, 2019 (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with Iowa Physicians Clinic Medical due to violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on March 11, 2019 at 3:00 p.m. Claimant participated. Employer participated through Tracy Keller, Human Resources Business Partner. Employer's Exhibits 1 and 2 were admitted.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a clinic supervisor from February 12, 2018 until her employment with Iowa Physicians Clinic Medical ended on January 29, 2019. (Keller Testimony) Claimant's direct supervisor was Ali Rigdon, Senior Clinic Administrator. (Keller Testimony)

Employer has a privacy and security policy in its employee handbook. (Keller Testimony) The policy prohibits the intentional access or disclosure of Protected Health Information (PHI) with harmful intent or malice. (Exhibit 2) An example of such prohibited behavior is an employee accessing or disclosing PHI for use in a personal relationship. (Exhibit 2) The policy defines PHI as information that is created or received by employer and relates to the physical health or condition of an individual or the provision of health care to an individual and identifies the individual. (Exhibit 2) The policy states that accessing medical records with malicious intent is punishable by immediate termination. (Exhibit 1) Claimant had access to the employee handbook and knew the privacy and security policy. (Claimant's Testimony) Claimant also received training on the policy. (Keller Testimony)

On January 22, 2019, claimant was assisting a patient and the patient's mother, when the mother asked whether claimant's children attend the same daycare as the patient. (Claimant Testimony) Claimant noted that her children do attend the same daycare. (Claimant Testimony) The mother then remarked that she had informed the daycare provider that the child had been

diagnosed with strep. (Claimant Testimony) Later that day, the daycare provider sent a text message to claimant asking how long the patient would be contagious and called the patient by name. (Claimant Testimony) Claimant replied that strep is contagious for 24 hours after medication. (Claimant Testimony) The mother did not give claimant permission to disclose information to or discuss patient's condition or treatment with the daycare provider. (Claimant Testimony)

On January 28, 2019, claimant's message to the daycare provider came to employer's attention. (Keller Testimony) Employer investigated the incident and discharged claimant on January 29, 2019 for violation of the privacy and security policy. (Keller Testimony) Employer considered claimant's role as a supervisor in its determination to discharge claimant. (Keller Testimony) Claimant received no prior warnings for violating the policy or other disciplinary action. (Keller Testimony) Claimant alleges that she did not violate the policy because her response to the daycare worker only provided generic information regarding strep and its treatment. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up

to or including discharge for the incident under its policy. 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).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant asserts that her response to the daycare provider's question did not violate the privacy and security policy because she only revealed general information about strep. The administrative law judge is not persuaded by claimant's argument. Claimant's response to the daycare provider's question was a disclosure of protected information. The daycare worker did not ask a general question about strep. The daycare worker asked how long the patient was contagious. By replying that strep is contagious for 24 hours after medication, claimant revealed the patient's physical health and condition to the daycare provider. While claimant violated the privacy and security policy, she did not do so with harmful intent or malice. Claimant was not willfully or wantonly disregarding employer's interests when the disclosure was made. Notwithstanding the training claimant received, she had no prior warnings for violating the privacy and security policy. Employer has not met its burden of proving disqualifying, job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed.

DECISION:

The February 15, 2019 (reference 01) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs