

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY W BLANK
Claimant

APPEAL NO. 08A-UI-06375-M

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASON CITY CLINIC PC
Employer

**OC: 06/08/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 7, 2008, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 21, 2008 at Mason City. Claimant participated personally with representative and witness Jill Blank. Employer participated by Douglas Fulton, Attorney at Law with witness Dana Young, Administrator. Exhibits One through Seven were admitted into evidence.

ISSUE:

The issue in this matter is whether 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: Claimant last worked as a physicians assistant for employer on June 6, 2008.

Claimant was discharged on June 6, 2008 by employer because claimant accessed hospital patient information on a family member in May of 2008. Claimant was not an employee of the hospital. Claimant had verbal but no written permission from the family member to access the hospital information. The family member was claimant's spouse who had personally asked claimant to access her test results. The second family member was claimant's own daughter. The hospital requires written permission pursuant to policy which seems to exceed HIPAA requirements. Claimant was not on the patient treatment team but did provide medical care to the family members who were hospitalized with a chronic infection. Both of claimant's children and spouse had suffered from a mysterious infection that left them hospitalized. The medical information was not required by claimant's clinic job. Claimant accessed the information using another doctor's ID and password by accident. Claimant would have used his own ID if he had not been so upset. The patient information was on claimant's own child and wife. Claimant did not follow clinic policy by receiving written permission to access family member records. The family members were not clinic patients at the time. Claimant had previously been warned about inappropriate access of claimant's son's records at the hospital by two hospital officials. As a result claimant obtained a waiver or release for his son so he could access the records.

Claimant did not obtain a waiver for the patient records received in May 2008 because it took too long the last time his son was hospitalized with the same infection. Hospital policy placed confidentiality ahead of patient desires and treatment. Claimant had not been warned by the employer concerning confidentiality. Claimant was notified of the employer's confidentiality policy. Claimant was notified that he may face discharge for violating the confidentiality policy. Employer always discharges for violation of confidentiality policy notwithstanding a three step disciplinary procedure.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant allegedly violated employer's policy concerning confidentiality. Claimant was notified concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant violated a hospital rule and not a clinic rule. Claimant's use of another doctor's ID and password was with permission. Accessing records of claimant's spouse and child was with permission. Claimant was authorized to access the records. Claimant was assisting in providing medical care and was therefore a medical provider. There is no HIPAA violation as the information was accessed with permission of the patients. Claimant is allowed to grant permission to access records of his own minor children. Furthermore, claimant had no knowledge that he could be discharged for violating hospital policy. At best claimant believed he would be reprimanded. The absence of a prior formal warning detracts from a finding of intentional conduct with knowledge that discharge would result. It is noted that claimant experienced a month delay last time he wanted to access his child's records because of hospital red tape. The hospitalization in May was very serious. Claimant sought to assist in providing medical care for his family to put an end to the seeding infection. The prior hospital delay was ridiculously long and hampered receipt of appropriate medical care. In summary, claimant did not intentionally violate any clinic policy. Claimant was providing treatment to the family members and as such had a right to access the records. No HIPAA violation occurred. Claimant had authorization from his spouse to access the records. As a parent, with permission from the other parent, claimant had authority to access the records of his hospitalized minor child. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated July 7, 2008, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css