IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBIN L SPENCE
3117 SE 8TH ST
DES MOINES IA 50315

WELLMARK INC
636 GRAND AVE STATION 37
DES MOINES IA 50309

Appeal Number: 04A-UI-02254-RT
OC: 01/25/04 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Robin L. Spence, filed a timely appeal from an unemployment insurance decision dated February 18, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on March 18, 2004, with the claimant participating. Jo Gillespie, might have been available to testify for the claimant but she was not called because her testimony would have been repetitive and unnecessary. JoeAnn Alexander, Human Resources Team Leader, and Stacy Bruhn, Human Resources Coordinator, participated in the hearing for the employer, Wellmark, Inc. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer, most recently as a Customer Service Associate III, from December 28, 1981 until she was discharged on January 20, 2004. Throughout her 22 years of employment, the claimant had access to confidential information and never received any warnings or disciplines of any kind. The claimant was discharged for disclosing to two different persons the medical condition of an employee who was also a customer of the employer. This employee was the claimant's supervisor. The employer has very specific rules providing for the confidentiality of medical information and providing further that a breach of such policy or violation of such policy can be grounds for discipline up to and including termination and further provides that an employee who learns of such a breach or violation must report that breach or violation. The employer is also subject to HIPPA laws. The claimant was aware of all of these policies.

On January 6 or 7, 2004, while training a coworker, Samantha Malloy, and being near the desk of Ms. Malloy, the claimant saw on the desk a document reporting on the medical condition of the claimant's supervisor and a customer of the employer. The claimant did not seek out or directly access this information. Ms. Malloy had genuine employment duties or responsibilities requiring that information. Ms. Malloy then pointed out the document to the claimant. The claimant was concerned about the condition of her supervisor because her department had had recent high turn over rates and was short staffed and the employee morale was low. The claimant turned to a coworker, Jo Gillespie, whose desk is on the other side of the claimant's desk and told her of the supervisor's condition verbally and commented to Ms. Gillespie that they needed to make things easier on the supervisor. Sometime thereafter, Ms. Gillespie asked the claimant to tell another coworker, Ann O'Brien, who was standing right there, about the information. The claimant felt pressured to share the information with Ms. O'Brien and did so. Neither the claimant nor Ms. Gillespie nor Ms. O'Brien had any work related necessity in having the confidential information of the supervisor. The claimant signed a written statement on January 15, 2004, outlining all of these matters. The claimant was then discharged. There were no other reasons for the claimant's discharge. Although the claimant had had access to confidential information for 22 years as an employee of the employer, she had never been accused of such behavior before nor had she ever received any warnings or disciplines of any kind and including this behavior.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code Section 96.6(2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6,11 (Iowa 1982) and its progeny. Although it is a close question, the administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The testimony of the two witnesses is remarkably similar and that of the claimant's is most credible. The testimony of the two about the incidents giving rise to the claimant's discharge are set out fully in the Findings of Fact. Only one issue arose between the claimant and the employer's witness, Joe-Ann Alexander, Human Resources Team Leader, and that related to whether there was a high turnover and short staffing in the claimant's department. The claimant testified credibly that there was. Ms. Alexander testified that she had no personal knowledge but didn't think that that was correct. However, Ms. Alexander did agree that jobs had been eliminated. The administrative law judge concludes that claimant's testimony was credible and that there was a high turn over rate in her department. They were short staffed and morale was low and this prompted the claimant to provide the confidential information to Ms. Gillespie. The claimant was also credible when she testified that she did so only in order to make things easier on the supervisor who was the subject of the confidential information. The administrative law judge specifically notes that the claimant had over 22 years of successful employment service for the employer during which she had access to confidential information and during which she had never been accused of such behavior before, nor had she received any warnings or disciplines for anything including a breach of the employer's confidentiality policies. It is a close question, but under the facts here, the administrative law judge is constrained to conclude that the claimant's behavior in providing that confidential information was not a deliberate act or omission constituting a material breach of her duties and obligations nor did it evince a willful or wanton disregard of the employer's interests nor was it carelessness or negligence in such a

degree of recurrence as to establish disqualifying misconduct. Rather, the administrative law judge concludes that the claimant's actions were good faith errors in judgment or discretion or ordinary negligence in an isolated instance and not disqualifying misconduct. The administrative law judge in no way condones the disclosure of confidential information. However, the administrative law judge specifically notes that the claimant did not do anything to seek out or obtain this confidential information but merely saw it on the desk of a coworker whom she was training and the coworker had a job related function in having that information. The administrative law judge believes that the claimant, in disclosing this information, was governed by a good faith reason. The claimant credibly testified that she thought then and still thought that her actions were justified for the reasons set out above and given by the claimant. The administrative law judge is somewhat concerned that the claimant also passed this information on to a second coworker, but understands that the claimant was pressured to do so and was in keeping with the claimant's interest in attempting to make things easier for the supervisor.

Accordingly, although it is a close question, for all the reasons set out above, the administrative law judge concludes that the claimant was discharged not for disqualifying misconduct, and, as a consequence, she is not disqualified to receive unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits, and misconduct, to support a disqualification from unemployment insurance benefits, must be substantial in nature. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). Although it is a close question, the administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant her disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

DECISION:

The representative's decision dated February 18, 2004, reference 01, is reversed. The claimant, Robin L. Spence, is entitled to receive unemployment insurance benefits provided she is otherwise eligible.

kjf/b