

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CONNIE RUST
Claimant

APPEAL NO. 06A-UI-09602-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 10/09/06 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Connie Rust (claimant) appealed an unemployment insurance decision dated September 21, 2006, reference 02, which held that she was not eligible for unemployment insurance benefits because she was discharged from Care Initiatives (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 18, 2006. The claimant participated in the hearing. The employer participated through Bob High, Administrator; Evon Wedemeier, Director of Nursing; Jennifer Leeper, Charge Nurse/Licensed Practical Nurse (LPN); Mary Taylor, LPN; and Lynn Corbeil, Employer Representative. Employer's Exhibits One through Three and Claimant's Exhibits A and B 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 employer discharged the claimant for work-related misconduct?

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 was employed as a full-time certified nurse's assistant from June 19, 2006 through August 30, 2006, when she was discharged for conduct not in the best interests of the employer. At the time of hire, she signed that she received and understood the employer's work rules, which include an extensive amount of information regarding patient confidentiality. The claimant received additional training on the employer's privacy practices and federal privacy laws. 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 requirements 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. In addition to the strict confidentiality requirements, the employer also provides to its employees a list of prohibited actions, violation of which will result in immediate termination. These are called

Critical/Type A actions, and included within this list is conduct detrimental to company operations that results in serious negative public relations or poor customer service is contained.

On August 27, 2006, the claimant was concerned about a resident who was ill and she did not think the nursing staff was reacting accordingly. Instead of going through proper channels to ensure the resident received the proper treatment, the claimant contacted the resident's daughter and provided her personal opinion as to the resident's medical condition. This was not within the scope of the claimant's job duties. She is not qualified to give a medical opinion and violated federal privacy laws regarding the unauthorized release of medical information. However, she did not stop at that but went further to harshly criticize the nursing staff and presented to the resident's daughter that she was the only one who cared about the resident.

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 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for conduct not in the best interest of the employer. She contacted a resident's daughter and provided her personal opinion as to the resident's medical condition and an alleged lack of concern by the nursing staff towards the resident. The claimant may have had good intentions if she was acting out of concern for the resident, but she could have accomplished the same while acting with the employer instead of against the employer. Regardless of how the claimant personally viewed the situation, she violated employer policies and federal privacy laws by speaking with the resident's daughter. Her highly inflammatory remarks only served to scare the resident's daughter and could result in legal liability for the employer. The claimant's violation of known work rules and federal law was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. 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 September 21, 2006, reference 02, 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