

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANETTE A EVANS
Claimant

APPEAL NO. 13A-UI-03131-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**TAPESTRY SENIOR LIVING OF MARION
VILLAGE RIDGE**
Employer

OC: 02/10/13
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the March 7, 2013 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on April 15, 2013. Claimant participated with former employee Rochelle Sparks. Employer participated through executive director, Diana Niemier, facilities manager, Richard King, and community outreach and marketing coordinator, Janelle Bolts. Employer's Exhibit 1 (pages 19, 34-35, 50-52, 72-73) was received.

ISSUE:

Was the claimant discharged for 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 human resources/business office manager and was separated from employment on February 12, 2013. (Employer's Exhibit 1, page 19) She allegedly "breached confidentiality" on February 6 by taking documents ("non-resident information" e-mails) home. (Employer's Exhibit 1, p. 34) Copies of the e-mails were not provided, redacted or not. Claimant sent e-mails to Niemier about appointments for which she would be absent during specific times. Niemier told managers and staff to make copies of PTO requests for their records after she signed it. No specific mention was made about whether they could be taken home or if they must be left in the office. Other employees took PTO docs home because there were no lockers for all employees and no locks for those who did have lockers. When asked, claimant brought back those copies and was suspended from February 6 through 8, 2013 pending further investigation. Copies of the PTO documents were not provided. The employer had not previously warned claimant her job was in jeopardy for any similar reasons. Nor did the employer advise claimant or other employees that the policy was interpreted to include their PTO documentation. The documents at issue were not covered by Health Insurance Portability and Accountability Act (HIPAA). Bolts did not train claimant or otherwise give her any explanation of or discuss the handbook or any individual policies therein.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was merely the result of a vague policy as to PTO documentation and Niemier's unclear verbal instructions. Furthermore, inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in

violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The March 7, 2013 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css