

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERINN P SPEVACEK**

Claimant

**APPEAL NO. 12A-UI-08051-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 05/27/12**

**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 2, 2012 (reference 02) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on July 30, 2012. Claimant participated and was represented by William Townsend, Attorney at Law. Employer participated through benefits specialist Mary Eggenburg, human resources manager for patient services division Ray Haas, and recent immediate supervisor and revenue cycle manager Diann Bakkum.

**ISSUE:**

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a patient account representative from 2005 and was separated from employment on May 22, 2012. The employer conducted an investigation from May 3 through May 10, 2012 after it received complaints of invalid information and gaps of time in patient account entries and entry of incorrect social security numbers into patient accounts during April 2012. One patient number was entered into multiple accounts of other patients. The employer believes the conduct was deliberate because all information was entered within minutes of each other. Claimant explained it was because of a software or system copy and paste error. She double checked her work and is uncertain why the errors would have slipped through.

She was placed on administrative leave May 3, 2012 pending investigation and separation determination but was never given detailed information about the investigation, the complaints, or why she was ultimately discharged. Her former supervisor may have talked to her about errors in the past or in a performance review but the employer did not have more detailed information verbally or in writing. Teresa Alderman was her supervisor until February 2012 when Bakkum became her supervisor. May 3 was the first time this type of issue was brought to her attention and her monthly reports were satisfactory until then so she did not do this or

anything else to increase productivity. She maintained average claims handling requirements. She had not been warned her job was in jeopardy for any reason and her only training was job shadowing other workers.

### **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 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 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). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless

indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (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, at most, negligence but without prior warning or retraining of areas of the employer's concern. 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 July 2, 2012 (reference 02) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs