IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

RONNY NEFZGER Claimant **GENESIS HEALTH SYSTEM** Employer	**APPEAL 20A-UI-01147-AD-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/12/20** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On February 8, 2020, Ronny Nefzger (claimant) filed an appeal from the February 6, 2020 (reference 01) unemployment insurance decision that found she was not eligible for benefits.

A telephone hearing was held on February 24, 2020. The parties were properly notified of the hearing. The claimant participated personally. Genesis Health System (employer) participated by Information Services Administrator Betsy Tibbits. HR Coordinator Amy Haiar participated as a witness for employer.

Claimant's Exhibit 1 was admitted. Employer's Exhibits 1-9 were admitted.

ISSUE:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a part-time lab technician. Claimant's first day of employment was January 28, 2019. The last day claimant worked on the job was January 17, 2020. Claimant separated from employment on January 17, 2020. Claimant was discharged on that date by Haier, Tibbets, HR Coordinator Lindsey Swain, and Systems Manager Kim Swanson.

Claimant was discharged for violating employer's HIPAA policy. Employer's Exhibit 4. Employer became aware of a potential HIPAA violation by claimant on January 10, 2020, when claimant's supervisor emailed Haiar regarding claimant and others in the lab area discussing whether coworkers were working while contagious. Haiar notified Tibbets, who undertook an investigation.

Tibbets reviewed a medical audit trail program and determined claimant accessed medical test results for a coworker without reason or authorization to do so on several occasions in a two-day period. Claimant also told coworkers that the coworker's test results had come in and that she needed to talk to the coworker about them. Tibbets interviewed at least two coworkers who were aware of claimant accessing the records. Claimant did not have written or verbal authorization

witnessed by two individuals prior to accessing the coworker's medical records. Employer requires one of these two types of authorization before an employee may access or disclose medical information that the employee does not otherwise have work-related authorization to access or disclose.

Claimant was interviewed by Tibbets and acknowledged she had accessed the records in question. Claimant shared that she had the coworker's verbal authorization to access these records. Claimant was not aware of employer's policy requiring prior written or witnessed oral authorization prior to accessing the medical records. Claimant believed the oral authorization she received from the coworker was sufficient. Claimant later obtained a statement from the coworker in which the coworker states claimant did have her verbal permission to access the records, and the coworker was also unaware of employer's specific authorization requirements. Claimant's Exhibit 1. Employer did not interview the coworker as part of its investigation, as it believed claimant and the coworker were in "cahoots" and the coworker would not provide truthful information.

Claimant had received some training on HIPAA compliance at the time of hire and as recently as May 31, 2019. Employer's Exhibit 3, 5. The section of the employee handbook relating to HIPAA does not state that prior written or verbal authorization with two witnesses is required to access or disclose medical information. The employee handbook reads in part, "Do not use or disclose patient-specific information unless it is permitted or required by law, or unless the patient has authorized such disclosure. Do not access any patient information other than that necessary to perform your duties." It directs employees with questions to contact the Genesis Privacy Officer and reference employer's policy on permitted uses of personal health information. Employer's Exhibit 8. That policy does not indicate prior written or verbal authorization with two witnesses is required to access medical records. Employer's Exhibit 1. Documentation from the May 31, 2019 HIPAA training does not indicate such authorization is required, either. Employer's Exhibit 9.

Employer's policies allow for immediate termination if any employee is found to have accessed or disclosed patient information without authorization. Employer's Exhibit 7. Employer could be exposed to liability for HIPAA violations by its employees. Others have been terminated for the same conduct. Employer's Exhibit 2. Claimant had no prior discipline for HIPAA violations. Claimant did not regularly provide results or records to patients in her position. She would refer a patient to a doctor if they wanted those things. Claimant had never before in the course of her work had to get written or verbal authorization to access records.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the January 12, 2020 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits is REVERSED. Claimant is eligible, so long as she meets all other eligibility requirements.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32 provides in relevant part:

> 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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd*., 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman*, *Id*.

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.,* 386 N.W.2d 552, 554 (Iowa Ct. App.1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd*., 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd*., 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). As such, claimant is not disqualified from benefits.

While claimant did violate employer's HIPAA policy by failing to get the proper prior authorization before accessing or disclosing the coworker's health information, her violation of the policy was not intentional. Claimant was not aware of the policy. The administrative law judge notes that nowhere in the documents provided by employer is that policy delineated. It is also notable that claimant did not have occasion to know of this policy in her day-to-day work, as she never provided results or records to patients.

The administrative law judge notes employer also found in its investigation that claimant disclosed the results of the coworker's tests to coworkers in the lab. However, employer offered no written statements or testimony from first-hand witnesses to support this finding, and Claimant credibly denied that was the case. Based on this record, the administrative law judge cannot find claimant shared the results of the test with coworkers.

However, as set forth above, the administrative law judge does find claimant told coworkers that the coworker's test results had come in and that she needed to talk to the coworker about them. Importantly, this was after claimant had received verbal authorization from the coworker to access the records. Furthermore, it was not shown that telling coworkers that the coworker's results were available constituted a HIPAA violation. Notably, it appears the coworkers likely knew about the existence of the test results already, as there had apparently been talk about them in the lab prior to that point.

Misconduct can also be based on "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." But claimant's conduct doesn't rise to this level, either. Claimant's conduct here is better characterized as an isolated, good-faith error in judgement or discretion rather than negligence of such a degree as to constitute misconduct.

DECISION:

The February 6, 2020 (reference 01) unemployment insurance decision is REVERSED. Claimant is eligible for benefits, so long as she meets all other eligibility requirements.

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Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
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Decision Dated and Mailed

abd/scn