

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MELISSA BRIGGS**  
Claimant

**IOWA DERMATOLOGY CLINIC PLC**  
Employer

**APPEAL 19A-UI-02906-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/24/19  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 27, 2019, (reference 01), that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 25, 2019. Claimant participated. Employer participated through Matt Schemmel, Chief Operating Officer and Casey Walters, Senior Human Resources Business Partner.

**ISSUE:**

Was the claimant discharged due to job connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as an assistant clinic manager beginning on April 9, 2018 through February 27, 2019, when she was discharged. When she was hired the claimant was given and signed off on the employer's confidentiality policy. Claimant had also been informed that she was required to comply with HIPAA which requires medical providers to protect a patient's privacy. Claimant had not completed her HIPAA training during her employment.

On February 5, the claimant accessed the records of patient G.U. Claimant had no business reason to do so. Employer's records indicate that while G.U. had an appointment on February 6, it was another employee who made the appointment reminder call to G.U. on February 5.

Claimant and G.U. know each other outside of claimant's employment. G.U.'s son is the father of Claimant's grandchild. Claimant's daughter is in a romantic relationship with G.U.'s son.

On February 26, G.U. called Mr. Schemmel to complain that claimant had accessed her records and that claimant had shared information others. Mr. Schemmel began an investigation. Later that day patient G.U. called back to say she did not want to pursue her complaint as she had learned that claimant could lose her job. G.U. told Mr. Schemmel she would not be returning to the business as a patient because of what claimant had done. Mr. Schemmel continued with

the audit of claimant's conduct. A review of the practice management software showed the claimant accessing G.U.'s records on February 5 and viewing a number of different pages of patient G.U.'s records. Claimant spent more time viewing G.U.'s records than any other patient. The employer learned of claimant's inappropriate access to the records on February 26 and conducted their investigation that same day.

When the claimant was confronted about the incident on February 27 she did not tell the employer she was accessing the patient records because she was on the phone with the patient helping her. Instead she only said, "[y]ou mean I can't even look at them?"

The employer's review also illustrated that claimant was only looking at the records in "view" mode. Thus, the claimant could not have updated the patient's address as she indicated during her testimony at hearing.

Claimant knew that violation of the employer's HIPAA policy or their confidentiality policy even on one occasion could lead to discharge.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The claimant worked as an assistant manager in the clinics. She knew that she was obligated to follow both the employer's confidentially policy and the HIPAA policy and that even one violation of the policy could lead to her discharge.

The claimant could have provided a copy of her own cell phone bill showing an incoming call on February 5 from patient G.U. to support her version of events. She did not do so, despite knowing the reason the employer had discharged her was due to access of the records on that date.

The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant less credible than Mr. Schemmel. The claimant had no business reason to access G.U.'s records on February 5. The administrative law judge does conclude that the claimant's failure to provide proof of the phone call from G.U. is because there never was a phone call from G.U. Additionally, claimant indicated she was updating G.U.'s new address, but the employer's audit showed she only reviewed records so she could not have updated records as she indicated in her testimony. Claimant violated the employer's policy by even accessing G.U.'s records with no business purpose; conduct she knew or should have known was prohibited. The claimant's action cost the employer at least one patient. This is disqualifying misconduct. Benefits are denied.

**DECISION:**

The March 27, 2019, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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