

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE L BAMMER
Claimant

APPEAL NO. 13A-UI-04889-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALEGENT HEALTH
Employer

OC: 03/24/13
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Nicole Bammer, filed an appeal from a decision dated April 11, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 3, 2013. The claimant participated on her own behalf. The employer, Alegent Health, participated by RN/Team Leader Shelly Marshall and was represented by TALX in the person of Tom Kuiper.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Nicole Bammer was employed by Alegent Health from April 28, 2008 until March 21, 2013 as a full-time resource specialist. On March 15, 2013, she received a written warning for a HIPPA violation. She had sent medical information about a patient to the wrong company regarding a workers compensation claim. The employer had to provide identity theft security coverage for this individual because the medical records contained personal information ranging from personal medical results to social security number. The warning advised Ms. Bammer her job was in jeopardy if there were any further violations.

On March 20, 2013, a co-worker notified the claimant that a patient she had just checked in needed to have the contact information changed regarding the company to which medical information was to be sent. Ms. Bammer said she would change it on the system but did not do so. As a result this patient's confidential personal and medical information was also sent to the wrong company. Her negligence resulted in another HIPPA violation.

The matter was investigated and the claimant acknowledged in writing she had agreed to change the contact information but did not get around to it because she got busy with other things.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised her job was in jeopardy as a result of her failure to preserve the confidentiality of patient records. The first occurrence was her failure to properly check the address of record for the contact person. The second was a failure to promptly change the contact information when she agreed to do so which also caused confidential information to be sent to the wrong company.

Although neither of these incidents appear to be the result of willful and deliberate intention to harm the employer or the patients, it was two incidents in less than a week. Under the provisions of *Huntoon* (supra) such a degree of negligence constitutes misconduct. The claimant was discharged for substantial, work-related misconduct and is disqualified from receiving benefits.

DECISION:

The representative's decision of April 11, 2013, reference 01, is affirmed. Nicole Bammer is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll