

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HELENA K JOHNSON
Claimant

RIVERWOODS TERRACE LLC
Employer

APPEAL NO. 20A-UI-01831-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/02/20
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 18, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 17, 2020. Claimant participated personally. Employer participated by Lene' Moore. Employer's Exhibits 1-3 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 29, 2020. Employer discharged claimant on January 29, 2020 because claimant was alleged to have provided unsanitary cares to patients and was alleged to have allowed a third party to access patient information without proof of identification.

Claimant worked as a resident assistant for employer. At or around the time of hire, claimant learned proper procedures for delivering cares to patients. Claimant also received training for HIPAA procedures to be followed to ensure security of patient information.

On January 26, 2020 a representative from the Iowa Department of Inspections and Appeals came to visit the facility where claimant worked. The representative reported that claimant had not maintained proper cleanliness and safety in the delivery of drugs to patients. Claimant was reported to have put on gloves to take out trash, and then wore the same gloves to serve medications to a couple of patients before changing the gloves once to serve three more patients.

The DIA official also reported that claimant allowed the inspector to look at the notebook where she held information on each of the patients she was serving, without first finding out that the inspector was legally able to view such information. This was in violation of HIPAA regulations.

Claimant disputed the allegations of the DIA agent. She stated that regarding the alleged unsanitary actions she had washed her hands and changed her gloves after taking out the trash. Claimant stated that she was washing her hands and changing the gloves in a room that was away from where the DIA agent could see her. She'd gone through this same procedure in the other room, not only after taking out the trash, but also after she'd delivered the cares to each patient. As the DIA agent didn't see her, she thought claimant hadn't changed the gloves.

Regarding the sharing of information on her notebook, claimant stated that she hadn't shared the information. Rather, the agent, who hadn't identified herself, was looking over the claimant's shoulder as she was accessing patients' information.

Claimant received no warnings regarding either of these alleged actions prior to her termination.

REASONING AND CONCLUSIONS OF LAW:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer

has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

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*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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).

The administrative law judge received direct testimony from only one party – the claimant. The employer not only did not produce the only witness to alleged actions of the claimant, it also did not produce that person's actual reports. 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).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning providing sanitary cares and working in accordance with HIPAA regulations. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because employer did not prove up misconduct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated February 18, 2020, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn