

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTORIA L APALA CUEVAS
Claimant

APPEAL NO. 11A-UI-12946-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC
Employer

OC: 08/28/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated September 28, 2011, reference 02, which held the claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 8, 2012, in Davenport, Iowa. The claimant participated. The employer participated by Michael DeMouilly, human resources director; Allie Cinadr, supported community living manager; and Theresa Cali, human resources generalist. The record consists of the testimony of Theresa Cali; the testimony of Allie Cinadr; the testimony of Michael DeMouilly; the testimony of Victoria Apala Cuevas; Claimant's Exhibits A through G; and Employer's Exhibits 1 through 14.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides services to mentally challenged individuals. The claimant was hired on March 19, 2007, as a direct support professional. She was a full-time employee. She worked in homes with individuals. Her responsibility was teaching daily living and functioning skills. Her last day of work was September 16, 2011. She was terminated on September 19, 2011.

The incident that led to the claimant's termination occurred on September 15, 2011. At approximately 2:00 p.m., the claimant stopped at a residence where she worked to complete a report and to check the communications log. While she was at the residence, the claimant told other staff members that she had made a copy of a resident's Medication Administration Record (MAR) and removed the copy from the residence. The claimant did not have permission from the resident to make the copy and remove it from the residence. The claimant also complained about her supervisor to other staff members.

The staff members informed management about the claimant's removal of the MAR. The employer conducted an investigation and concluded that the claimant had removed the MAR without permission and that a serious HIPAA violation had occurred. The employer also determined that the claimant had violated its employee standards of conduct and confidentiality. The claimant was terminated on September 19, 2011.

The employer has written standards of conduct. Termination could result when an employee engaged in insubordination and/or disregarding working directions and instructions received from a supervisor refusing to comply with the same. A willful violation of agency or government rules was also grounds for termination. The claimant was fully aware of these policies.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer is entitled to establish work rules and policies and can reasonably expect that employees will follow those rules. The employer has the burden of proof to establish misconduct.

The evidence in this case showed that the claimant copied a medical record belonging to one of the individuals for whom she provided care. She made that copy without the individual's permission. She also removed the copy from the residence. The claimant violated HIPAA, the federal law that protects confidentiality of an individual's medical records. The employer has a work rule that clearly states that a willful violation of government rules or regulations is grounds for termination of employment.

In addition to violating HIPAA, the claimant made disrespectful comments about her supervisor to an individual who was in the program and suffered from anxiety. This represented unprofessional behavior on her part. Whatever grievance she may have had against the supervisor should not have been shared with an individual suffering from anxiety.

The claimant tried to justify her actions by claiming she made a copy of the record to protect herself and the individual. The claimant did not agree with what the supervisor had put down about a medication taken by the individual. The claimant admitted that she did not check with on-call, which handles medical matters. She was determined to file a grievance against the supervisor and decided to copy the record without permission of the individual. The claimant's conduct was willful and a direct violation of HIPAA and the employer's policies. This is misconduct. Benefits are denied.

DECISION:

The representative's decision dated September 28, 2011, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw