IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

CHASITY H KELLY
Claimant

CENTRAL IOWA HOSPITAL CORP
Employer

APPEAL NO. 19A-UI-01812-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/10/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Chasity Kelly (claimant) appealed a representative's February 26, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Central Iowa Hospital (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 15, 2019. The claimant participated personally and through Nicholas Trapp, the claimant's friend. The employer participated by Susan Sweitzer, Human Resources Business Partner. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 28, 2016, as a full-time clinical assistant 2. The employer did not issue the claimant any warnings during her employment.

The employer posts its policies online but employees do no sign that they have read them. One of the employer's policies stated, "Unauthorized disclosure of personal health information example posting information, comment, picture, without consideration of patient's privacy which can lead to the identity of the patient on a social media platform that is listed as an example under deliberate or purposeful violation without harmful intent or malice." (sic) Annually, the claimant took Health Insurance Portability and Accountability Act (HIPAA) training. Because of her training, the claimant does not identify herself as an employee of the business on social media.

On an unknown date, a former co-worker and patient posted a comment about herself on her own Face Book page that said, "Excited to announce that baby Gillespie is a boy". About twenty co-workers of the claimant's posted congratulations. The claimant posted, "Congratulations. So glad I can share the good news."

On January 28, 2019, an anonymous complaint was made to the employer's compliance line about an employee's post. A screen shot of the post was provided and only showed the comment "Excited to announce that baby Gillespie is a boy". The claimant's first name was given and an incorrect last initial.

The employer identified the claimant on January 31, 2019, and set up a meeting with her on February 4, 2019. On February 4, 2019, the claimant told the employer she did not post the comment "Excited to announce that baby Gillespie is a boy". She said she posted, "Congratulations. So glad I can share the good news." The employer told the claimant to remove her comment because this involved a patient.

The claimant continued to work until February 11, 2019. On February 11, 2019, the employer terminated the claimant for posting information about a patient on a social media platform. The employer would not tell the claimant what information was given in "Congratulations. So glad I can share the good news."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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).

Iowa Admin. Code r. 871-24.32(4) provides:

> (4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer witness did not have access to the full Face Book posting, employer documentation of the February 4, 2019, investigatory meeting, information about the claimant's dates of HIPAA training, other employees outcomes who posted congratulations, or the specific policy which the claimant violated. The employer offered no proof that the claimant ever received the policy for which she was terminated. The employer did not provide sufficient evidence of job-related misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's February 26, 2019, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs