

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA J LEE
Claimant

APPEAL NO. 11A-UI-07751-SWT

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

**APAC CUSTOMER SERVICES
OF IOWA LLC**

**OC: 05/15/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 6, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on July 8, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Joe Mies participated in the hearing on behalf of the employer with a witness, Tara Pohlmann. This Nunc Pro Tunc decision is being issued to correct the disposition code in the caption of this case used by the agency for its records.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a customer service representative from September 25, 2006, to May 12, 2011. On August 19, 2010, the claimant was faxing medical documents and sent it to the wrong number. This was considered a violation of the privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA). The claimant was warned about this on August 31, 2010.

The claimant received a written warning about incurring Medicare D errors on May 10, 2011, based on errors incurred on April 22 and May 2. She was told that any further errors would result in a final warning.

On May 11, 2011, the employer learned that the claimant had on March 25, 2011, faxed medical documents to the wrong fax number. The correct number was 919-843-5515, but the number she faxed it to was 919-842-5515. The claimant believes she recorded the number correctly, but missed the "3" and accidentally hit the "2" when she dialed the number into the fax machine. The document was sent to a personal residence, but the client business did not report this error to the employer until May 11. This was considered a violation of the privacy requirements of the HIPAA.

On May 11, 2011, her supervisor issued the claimant a final written warning for this infraction, which warned her that further infractions would result in further disciplinary action, including termination. She was given instructions to follow to prevent further incidents of erroneous faxing.

The employer changed its mind and decided to discharge the claimant on May 12, 2011, after the client company insisted that the claimant not work with its program anymore.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful misconduct has been proven in this case. The final instance of negligence was the second time of sending out a fax incorrectly—seven months later. I believe the claimant that she misdialed by accidentally hitting the “2” instead of “3.” Although I realize the legal import of what occurred, this is isolated ordinary negligence, not some reckless act by the claimant.

DECISION:

The unemployment insurance decision dated June 6, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw