

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA L HUBKA

Claimant

APPEAL NO. 10A-UI-07048-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINNESHIEK MEDICAL CENTER

Employer

OC: 04/04/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Laura Hubka filed a timely appeal from a representative's decision dated May 5, 2010, reference 01, which denied benefits based upon her separation from Winneshiek Medical Center. After due notice, a hearing was held in Decorah, Iowa on July 22, 2010. Ms. Hubka appeared personally and testified on her own behalf. Appearing on behalf of the claimant was her attorney, Mark B. Anderson. The employer participated by James H. Gilliam, Attorney at Law, and witnesses: Julia Katzer, Director of Radiology Department, Tiffany Somner, Director of Health Information Management, and David Jordahl, Chief Operating Officer. Exhibits One through Ten were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Laura Hubka was employed by Winneshiek Medical Center most recently from June 24, 2002 until April 1, 2010 when she was discharged based upon the employer's belief that the claimant had accessed patients' records for no approved business reason in violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the medical center's policies governing the disclosure of protected health information. Ms. Hubka held the position of a full-time ultra stenographer in the center's radiology department. Ms. Hubka also performed back-up duties as a front office worker for the Winneshiek Medical Center. Ms. Hubka's immediate supervisor was Julia Katzer.

Based upon reports from staff members (unidentified) the claimant's supervisor, Ms. Katzer, believed that Ms. Hubka may have engaged in accessing patients' records for no work-related reasons in violation of the medical center's confidentiality requirements in violation of the HIPAA Act. Ms. Katzer contacted Tiffany Somner, the director of health information, and an extensive audit of computer records took place. Because of the nature of the claimant's work in the

radiology department and in the business office, Ms. Hubka was required to access patient records on numerous occasions each day while working for the Winneshiek Medical Center. The review of the claimant's access was between September 24, 2009 when changes in a federal high technology confidentiality act became effective requiring all medical facilities to provide notice to patients of non-authorized access and February 22, 2010 when the rules were revisited in a meeting with staff.

In analyzing the voluminous records, Ms. Somner and Ms. Katzer determined if the claimant had access to the particular records and the reviewers attempted to determine whether Ms. Hubka had a legitimate reason to access the particular records for medical center reasons. Because employees who access the records are not given the option of entering a reason for the initial access, the reviewers relied upon supplementary documentation in medical files to try to determine whether the claimant's access was for a legitimate purpose such as preauthorizing the patient for a subsequent medical test or for a current procedure the patient was undergoing in the radiological department. The employer also attempted to verify that the entries were for reasons other than to provide verification for billing and histories for insurance certification purposes.

In training provided by the Winneshiek Medical Center, Ms. Hubka and other similarly situated employees who had access to patient records were informed of the medical center's confidentiality requirements and HIPAA requirements. Employees acknowledged receipt of the information in training and the medical center provided yearly "blitz" training and tests to ensure that employees were aware of the confidentiality requirements.

To ensure access to confidential patient information records was limited to employees with authorization credentials and who were using the system for work-related purposes regulatory requirements mandated a two tier password access system for employees using the system to access medical records and that the information technology systems automatically shut down after a few moments of non use. This requirement was implemented to prevent non authorized employees or individuals passing by from using systems that had been left open.

When the investigation and review of company records by Ms. Katzer and Ms. Somner showed approximately 50 accesses attributed to Ms. Hubka between September 24, 2009 and February 22, 2010 that showed no identifiable reason for the access, the employer concluded that claimant had been violating the medical center's confidentiality rules as well as the HIPAA Act.

On April 1, 2010, Ms. Hubka was called to a meeting and told the complaint. The claimant was shown a synopsis of the accesses that the employer felt were unauthorized (See Exhibit 10) and asked to provide an explanation. When the claimant could not provide an immediate explanation at that time, she was terminated from employment.

In her position as an ultra stenographer and front office worker, Ms. Hubka was required to access patient information repeatedly and for a variety of reasons. Access was required by consulting physicians, insurance companies, and the patients themselves. Often if services were subsequently denied there would be no subsequent documentation of a procedure or test which could be used to verify that the earlier access was for a legitimate work reason. Ms. Hubka had been required to train new employees on the medical access system and often used random entries to demonstrate accessing methods and referencing to new workers. Because the system did not require nor allow an individual accessing the system to enter a reason, there was no clear reason for the access. There were therefore numerous accesses, in the records for which no later supporting documentation had been entered.

Although policy required that access to computer systems be strictly limited to individuals with authorization and that systems be used to prevent unauthorized access, these requirements were routinely not followed in the department where Ms. Hubka was assigned to work. Employees had been taught by software manufacturers as well as the department manager to disable an automatic shut-off system by manipulating the PC so that passwords were not necessary to access confidential portions of the records. Employees were also instructed to leave more than one computer on at all times. This was to ensure quick access in emergency situations. These internal rules facilitated access to confidential patient records during emergency situations, but also facilitated access by unauthorized individuals during times when authorized employees were not using computers although the records made it appear that they were still doing so.

Ms. Hubka denies accessing confidential patient records for unauthorized reasons or intentionally allowing unauthorized individuals to do so. The employer has not alleged that Ms. Hubka provided any access information to unauthorized third parties.

It is the claimant's belief that the investigation and her discharge were related to her previous support of a doctor who had left the medical center.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes Ms. Hubka was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify the denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits in all cases. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

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.

In this case the Winneshiek Medical Center discharged Ms. Hubka based upon its reasonable belief that a number of accesses to confidential medical records could not be supported as business related and thus the accusation of unidentified workers that Ms. Hubka was accessing these records for no business purpose had been verified.

The question before the administrative law judge in this case is not whether the employer has the right to discharge Ms. Hubka for these reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate Ms. Hubka may have been a sound decision from a management viewpoint, the evidence in the record is not sufficient to establish intentional disqualifying misconduct.

The evidence in the record establishes that Ms. Hubka was required to access patient records on numerous occasions each day that she worked and for numerous reasons. Many of the reasons for access could not later be substantiated because there were no medical records created later to verify the contact due to factors that were beyond Ms. Hubka's control. Patients may have decided not to have further tests completed or the insurance company may have chosen not to support the tests or procedures that were being considered. The claimant also had open access to records to teach new employees how to perform these tasks. The evidence also shows that computer systems were often left unsecured so that they would be immediately available during emergency situations.

Ms. Hubka supplied satisfactory explanations for specified entries demonstrating a work-related purpose. It appears that Ms. Hubka did not report the anomalies in the center's computer security systems as she had been instructed to follow them and believed that the instructions were the approval of the medical center's management.

Based upon the law and the facts in this case, the administrative law judge concludes that intentional misconduct sufficient to warrant the denial of unemployment insurance benefits has not been established. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 5, 2010, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs