

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

**SANDRA E. DAVIS**  
Claimant

**DUBUQUE INTERNAL MEDICINE, PC**  
Employer

**CASE NO. 23IWDUI0004  
IWD APPEAL 22A-UI-14210**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/22/22  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 13, 2022 (reference 01) unemployment insurance decision that denied benefits based upon a finding that the claimant had been discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on August 18, 2022. Attorney Randall Schueller represented the claimant, who testified. Jenny Bockenstedt, PHR, SHRM-CP, participated for the employer, Dubuque Internal Medicine, PC, and submitted exhibits, which were made a part of the record. The administrative file was made a part of the record.

**ISSUE:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Claimant Sandra Davis was a full-time patient service representative at Dubuque Internal Medicine, PC. She began her employment on March 15, 2000, and her employment was terminated on May 25, 2022.

Following an accusation that employees were accessing the records of new employees, the employer underwent an audit. The audit determined that the claimant was accessing the confidential records of medical employees, contactors, and high profile community members outside the scope of her work responsibilities. On May 18, 2022, the claimant accessed nine different records. According to the employee handbook, the claimant was not allowed to access patient records outside her job duties. (Bockenstedt testimony). Specifically, the employee handbook states:

Confidentiality is the fundamental cornerstone of trust in healthcare. It is the obligation and policy of Grand River Medical Group to maintain the confidentiality of all patient health information and protect all patients' rights to privacy.

....

Retrieving and/or discussing confidential medical information for any purpose other than "need to know" required by an employee's role and responsibility is prohibited. No medical record is to be read except in the line of duty, and then only that part of the record that is absolutely necessary.

....

Violation of this policy is subject to disciplinary action up to and including immediate termination.

(Employee handbook). The claimant signed the employee handbook on May 22, 2020. (Employer exhibit).

Jenny Bockenstedt, human resources, and claimant's supervisor Kayla Hobson determined that based on the extent of the claimant's actions, her conduct was severe and pervasive. The company did not trust the claimant could do the job accurately. Ms. Hobson and Ms. Bockenstedt met with the claimant who stated that she was aware of the training and handbook, but did not think she would be fired for her actions. Ms. Hobson and Ms. Bockenstedt explained that because the claimant accessed patient records without a business need to do so, she was being discharged for a violation of HIPPA and a violation of company policy. (Bockenstedt testimony).

At hearing, the claimant stated that she was not sure why she was terminated, but in the meeting, Ms. Hobson and Ms. Bockenstedt said it was because she violated HIPPA. She did not quit her job and was ready, willing, and able to work. (Davis testimony).

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

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.

Iowa Admin. Code r.871-24.32(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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer

made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work-connected." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The courts have concluded that off duty conduct can have the requisite element of work connection. *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, for an employer to show that an employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence that the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's image would suffer. *See also Dray v. Director*, 930 S.W.2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Dept. of Emp't Security*, 656 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§77-78.

The claimant was discharged from employment after accessing the confidential records of medical employees, contactors, and high profile community members. On May 18, 2022, the claimant accessed nine separate records. To be disqualifying, the claimant's conduct must be "work-connected." It is clear that the claimant would not have had access to these records were it not for her position as a patient service representative. There is no dispute that when she accessed these records, it was outside the scope of her work responsibilities.

The claimant's unauthorized use of confidential medical information violated the employer's policies outlined in the employee handbook. The claimant knew or should have known that her conduct violated the employer's policies and could have a negative impact on the employer.

The claimant's actions constitute disqualifying misconduct even without a prior warning. The claimant was discharged for a current act of disqualifying work-related misconduct. Benefits are denied.

#### **DECISION:**

The June 13, 2022, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.



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Kathleen M. O'Neill  
Administrative Law Judge

August 29, 2022  
Decision Dated and Mailed

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.

- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.

**Case Title:** SANDRA E. DAVIS V. DUBUQUE INTERNAL MEDICINE PC  
**Case Number:** 23IWDUI0004  
**Type:** Proposed Decision

IT IS SO ORDERED.

*Kathleen M. O'Neill*

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Kathleen O'Neill, Administrative Law Judge