

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MARY L FENNELL**  
Claimant

**APPEAL NO. 18A-UI-11775-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIOUXLAND MEDICAL EDUCATION  
FOUNDATION**  
Employer

**OC: 10/28/18**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 29, 2018, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on October 31, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on December 20, 2018. Claimant Mary Fennell did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Heather Reinhardt represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects that no benefits have been disbursed to the claimant in connection with the October 28, 2018 original claim.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mary Fennell was employed by Siouxland Medical Education Foundation as a Medical Record Specialist from February 2018 until October 31, 2018, when the employer discharged her from the employment in response to a pattern of careless and/or negligent work performance. Ms. Fennell brought to the employment substantial experience in processing medical records and possessed the ability to perform her work duties competently. On August 2, the employer issued a written reprimand to Ms. Fennell after determining that Ms. Fennell had made several errors when performing her medical record indexing duties. To properly index the records, Ms. Fennell needed to submit records to the correct patient's chart and to attach the associated provider order to the record if there was such an order. On October 9, the employer issued a second written reprimand for similar errors, suspended Ms. Fennell for a day or two, and placed

her on a two-week probation when she returned to work on October 11, 2018. The employer subsequently audited Ms. Fennell's work for the period of October 22-26 and noted eight additional errors. Because Ms. Fennell was dealing with patient records, careless and/or negligent performance of her duties could impact patient care and created potential and/or actual HIPAA violations.

Ms. Fennell established an original claim for unemployment insurance benefits that was effective October 28, 2018, but has received no benefits in connection with the claim.

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

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).

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 a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. 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. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

The evidence in the record establishes a discharge for misconduct in connection with the employment based on a pattern of carelessness and/or negligent work performance. The pattern of carelessness and/or negligence concerned patient medical records, occurred despite Ms. Fennell's ability to perform competent work, and occurred in the context of multiple reprimands for similar conduct. The pattern demonstrated an intentional and substantial disregard for the employer's interests. Ms. Fennell is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Fennell must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Because Ms. Fennell has received no benefits in connection with the claim, there is no overpayment issue to address.

**DECISION:**

The November 29, 2018, reference 01, decision is reversed. The claimant was discharged on October 31, 2018 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs