

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER J MONAGHAN
Claimant

IOWA PHYSICIANS CLINIC MEDICAL
Employer

APPEAL 17A-UI-06730-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/11/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 29, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 20, 2017. The claimant participated personally. The employer participated through Tracy Keller, human resources business partner. Sherri Clark and Heather Shook also testified for the employer. Claimant Exhibit A and Employer Exhibit 1 were received into evidence.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a patient service representative and was separated from employment on June 15, 2017, when she was discharged.

As a medical facility, the employer is required to comply with the Health Insurance Portability and Accountability Act (HIPAA). HIPAA has restrictions on access to medical records and other provisions to insure patients' privacy and confidentiality are protected. In connection with HIPAA, the employer has a specific internal policy regarding privacy and security (Employer Exhibit 1). Amongst the provisions, 2.2.7 states that if an employee accesses their personal medical records, it is a violation of policy (Employer Exhibit 1). In January 2017, the employer updated its policy to apply stricter penalties to the policy and specifically referenced employees accessing their electronic medical records (Employer Exhibit 1). The claimant did not receive the document containing the update (that was provided for the hearing) but acknowledged she

was aware that she could not access her medical records and penalties would be harsher, based on additional training she received. The undisputed evidence presented is that employees who were also patients for the employer, were expected to access the patient portal, that was also available to the public/patients, to access information regarding their account or treatment, unless there was a direct work need to access the information.

The claimant was verbally coached after an August/September 2016 investigation revealed that the claimant's own medical records had been accessed from her computer, which violated policy. The claimant denied being responsible for the infraction and suggested she either pulled them up for a doctor or nurse to look at her work station, or alternately, that they were accessed when she stepped away from her desk to pass a kidney stone and failed to secure her computer.

The final incident occurred after a subsequent audit performed in May 2017 revealed that on at least two occasions, the claimant had accessed her own record through the employer's electronic system, which violated the employer's policy of self-accessing one's electronic medical records (Employer Exhibit 1). The first occasion was on May 8, 2017, when the claimant logged on to the employer scheduling system ("Cadence") and entered in a lab appointment for herself, rather than have another patient service rep do it for her. (As a patient service rep, the claimant's job duties included some scheduling and billing matters.) The reason the claimant did not request a peer perform the duty was because no one was there at the time and she did not want to forget to ask for it to be scheduled the following day. The claimant stated she does not utilize post-it notes or electronic notes as reminders. There was no evidence presented that the lab appointment was urgent or an emergency and could not be scheduled the next morning by a peer.

The second incident occurred when the claimant accessed the Enterprise Billing application, which is also part of the electronic medical record keeping system. The claimant did not make any changes to her billing account but rather wanted to look up information about co-pays and her insurance. She could have called the billing department or her insurance company to obtain the same information. She was subsequently discharged.

It is the claimant's position that she did not access her electronic medical records, because she did not view screens containing lab information or treatment information. The claimant had to log on to the employer's electronic medical record keeping system to access the applications containing the billing and scheduling portals.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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).

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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). 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

In this case, the claimant was warned in fall 2016 to not access her own patient records through the employer's electronic medical system, consistent with the employer's policy against self-access (Employer Exhibit 1). Then in January 2017, the employer reiterated to employees that penalties would be harsher for future violations. While the claimant denied receipt of a written document to the effect, she admitted to knowing the penalties had increased for violations.

Then, on two occasions, the claimant logged on to the employer's electronic application to perform two functions for herself in the capacity as a patient for the employer, not as an employee. The claimant scheduled herself a lab appointment on May 8, 2017 and then on May 12, 2017 went into the billing portion of the employer's electronic application to view information regarding her account. The administrative law judge was not persuaded by the claimant's argument that she did not violate policy by accessing appointments or billing information, because it was not "medical" in nature such as lab results. Rather the claimant chose to use the employer electronic portal for her benefit, to access her information in the context of being a patient. The claimant failed to present any credible evidence to mitigate her accessing her patient records, such as an emergency. It was simply more convenient for the claimant to use her access as an employee to access her patient records rather than the claimant waiting until the next morning to ask her peer to schedule or calling the billing department for information.

In light of the prior warning to not self-access records and the enhanced penalties communicated by the employer, the claimant knew or should have known her conduct was contrary to the best interests and reasonable policies of the employer. The employer has established the claimant was discharged for misconduct. Benefits are denied.

DECISION:

The June 29, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed
jlb/scn