

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**CAROLYN JENSEN
2766 LONE TREE RD
BADGER IA 50516**

**TRINITY REGIONAL MEDICAL CENTER
ATTN TED VAUGHN
802 KENYON RD
FT DODGE IA 50501**

**Appeal Number: 05A-UI-07223-BT
OC: 06/12/05 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Carolyn Jensen (claimant) appealed an unemployment insurance decision dated July 5, 2005, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Trinity Regional Medical Center (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 17, 2005. The claimant participated in the hearing. The employer participated through Ted Vaughn, Director of Human Resources, and Janna Emick, Director of Home Health-Hospice. Employer's Exhibits One through Four were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time secretary from May 29, 1990 through June 15, 2005. She was discharged for violating the HIPAA Privacy Rule and the employer's confidentiality rules. The employer conducts audits of patient records two or three weeks after a patient's visit to the hospital. An audit is a review of a patient's records to determine which computers have accessed that particular patient's records to determine whether the access into those records was authorized or not. The employer's computer system can trace each access back to an individual computer.

While conducting an audit in the end of May 2005 or the beginning of June 2005, the employer discovered the claimant had accessed a former patient's records on May 16, 2005. This patient had passed away unexpectedly on May 13, 2005, and the claimant had no work-related reason to look at this patient's records. The claimant looked at the deceased patient's records from 9:27 a.m. to 9:32 a.m. on May 16, and ten seconds later she was accessing a different patient's records, which was connected to her employment. When confronted about viewing other's medical records, the claimant denied doing so but admitted she had looked at her own records and those of her daughter's. The employer's policies clearly prohibit employees from looking at any and all medical records unless it is for a work-related purpose.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be determined is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 claimant was discharged for violating the HIPAA Privacy Rule and the employer's confidentiality rules. The HIPAA Privacy Rule, or Standards for the Privacy of Individually Identifiable Health Information, issued by the Department of Health and Human Services, implements the requirement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). It establishes national standards for maintaining the confidentiality of protected health information (PHI); which effectively prohibits the release of that information without the patient's express written permission, except as provided by law. The employer's policies clearly prohibit employees from even looking at their own records.

Although the claimant denies viewing a deceased patient's records, the employer presented conclusive evidence confirming she had viewed these records on May 15, 2005. Furthermore, the claimant admitted violation of the employer's policies when she acknowledged that she had looked at her own and her daughter's health records. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant.

The only issue left to be determined is whether the claimant was discharged for a current act. 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. 871 IAC 24.32(8). The claimant's policy violation occurred one month before her discharge. However, the employer did not become aware of the claimant's policy violations until several weeks after the fact. Once discovered, the employer reacted immediately and it is therefore determined her discharge was not based on a past act. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated July 5, 2005, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

sdb/kjw