BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

LEE K HAUPERT

Claimant

HEARING NUMBER: 17BUI-02032

EMPLOYMENT APPEAL BOARD DECISION

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.3-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Lee K. Haupert, worked for Marshall County from July 1, 2015 through December 9, 2016 as a part-time mental health advocate whose primary responsibility was to ensure her clients' constitutional rights were protected in court proceedings, and other affairs.

On August 18, 2016, the Employer developed a form that included clients' names and claim numbers to be used by the Claimant for billing purposes. Prior to this change, the Claimant submitted billing statements that she believed were complete and adequate for the purposes of Central Iowa Community Services (CICS). But these billings did not contain the name and case number of clients under her care, which was necessary to receive payment for Claimant's services. Because these billings lacked names and case numbers, this information had to be accumulated through separate cross-references by staff and took additional hours to accumulate. This is what prompted the supervisors to create a new form during a supervisor's meeting held on August 18, 2016.

The supervisors' minutes from that meeting reflect that, "procedures and forms presented here today be used from here forward in reporting to Director of CICS in Marshall County." Numerous forms were presented for review; however, only one form was voted on as approved for billings, which was consistent with Hardin County's form for the same. The form was passed around to all attendees, including Ms. Haupert.

The Employer set up the Claimant's computer to accommodate the billing change, and told her to contact IT with any questions or concerns she had about the new procedure. Ms. Haupert questioned the use of this form. She believed she was being asked to violate HIPPA procedures by adding the names and case numbers to the form. She continued to complete billing forms as she had done in the past without names and case numbers, which caused her billings to be uncoded and not unpaid.

The Claimant subsequently hired an attorney supportive of her views, and the Employer hired an attorney to represent their views. During a board meeting held on October 13, 2016, the Employer asked the head of CICS and the Marshall County Attorney to explain why Claimant's concerns were misplaced. The Employer was tasked with the responsibility of contacting the Marshall County Attorney to inquire about the law and how it affects compliance with the new form. The Marshall County Attorney answered this inquiry in a letter to the Employer, indicating that "…I have looked through the applicable code sections and I do not believe that providing the name and case number of clients to CPC violate any confidentiality requirement on the part of the mental health advocate…"

From October 2016 until December, the Claimant continued to complete her billings without the names and case numbers of her clients. At this point, communication about whether or not the new form's requirements were a confidentiality violation continued between both parties' attorneys. A meeting was scheduled for December 9th to discuss Ms. Haupert's continued noncompliance with the Employer's directive. The Claimant's attorney indicated that the Claimant would not be attending that meeting. Claimant's attorney attended the meeting.

On December 9, 2016, a meeting was held in which the Employer determined that Ms. Haupert engaged in gross insubordination as she had continuously refused to use the form adopted by the Marshall County Board of Supervisors for billing purposes. (57:40-57:55; 1:02:02-1:03:00; Exhibit A) The Claimant was subsequently terminated.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
>
> The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993).

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. In the instant case, the Claimant had a legitimate concern about confidentiality, which she initially appropriately raised with the Employer. However, after the Employer researched her concerns which resulted in the Marshall County Attorney's determination which should have alleviated her concerns, Ms. Haupert continued to complete her billings in a manner that failed to comply with the Employer's directive. The Employer met with the Claimant explaining the new procedure and form, as well as provided IT service to assist her should she require help. Yet, she refused to comply.

Repeatedly refusing a direct order from a supervisor can constitute disqualifying insubordination. *See Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990)(repeated refusal to follow directions). Yet an employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. *See Woods v. Iowa Department of Job Service,* 327 N.W.2d 768, 771 (Iowa 1982). Still, the general requirement for following directions is so strong that "willful misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer" even though the actual refusal remains in the future. *Myers v. IDJS,* 373 N.W.2d 507, 510 (Iowa 1983). The upshot is that the law in insubordination cases evaluates the reasonableness of the employer's demand in light of the circumstances, along with the worker's reason for non-compliance. *See Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The key to such cases is not the worker's subjective point of view but "what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); *accord O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993) (objective good faith is test in quits for good cause).

Ms. Haupert's persistent concerns about personal liability for disclosing her clients' names and case numbers for billing purposes was not reasonable in light of the County's Attorney's determination. The Employer's request was not illegal, and was legitimate in light of its need to operate efficiently. The effect of the Claimant's noncompliance placed the Employer at risk for not having the mental health services she rendered being reimbursed by the CICS. The Claimant's behavior can only be characterized as a blatant disregard for the Employer's interests. Based on this record, we conclude that the Employer has satisfied its burden of proof.

DECISION:

The administrative law judge's decision dated March 6, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, she is denied benefits until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a". The Claimant has thus far received unemployment benefits to which she was not entitled based on this decision, and for which she has now incurred an overpayment.

The Claimant submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Claimant was not presented at hearing. Accordingly all the new and additional information submitted has not been relied upon in making our decision, and has received no weight whatsoever, but rather has been wholly disregarded.

Kim D. Schmett

Ashley R. Koopmans

AMG/fnv

James M. Strohman