

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAILEY A SCHNEDE
Claimant

APPEAL NO. 15A-UI-07872-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAC INC
Employer

OC: 06/07/15
Claimant: Respondent (2)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

DAC, Inc. filed a timely appeal from a representative's decision dated July 2, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 11, 2015. Although notified, the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Jill Kent, Human Resource Assistant. Employer's Exhibits A through H were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Hailey Schnede was employed by DAC, Inc. from May 30, 2014 until May 29, 2015 when she was discharged from employment. Ms. Schnede was employed as a full-time day service provider, providing assistance with life skills to disabled individuals. The claimant was paid by the hour. Her supervisor was Ms. Kelly Schneider.

On May 21, 2015, two co-workers reported that they had observed a video entry that Ms. Schnede had posted on her "Snap-Chat" account that depicted the faces of one or more of the developmentally disabled individuals that the claimant was providing services to that day. A further investigation revealed that in addition to using her cellphone during working hours and taking videos of clients, the claimant also appeared to be acted inappropriately by singing an inappropriate song and engaging in loud banter with another employee. Because the video posted by Ms. Schnede showed that she had been making the video posting while driving the company vehicle with clients aboard, the employer also concluded that Ms. Schnede had compromised the safety of the clients.

HIPAA policy and DAC, Inc. policy prohibit employees from taking pictures or disseminating pictures or images of clients being served.

DAC, Inc. policy prohibits cellphone use by employees except for emergency situations only and prohibits cellphones from being used to take photographs of persons being served by DAC, Inc. Ms. Schnede received copies of the company's cellphone usage policies, Internet usage policies, social media policies and vehicle use policies. Ms. Schnede was also trained on HIPAA requirements and prohibitions. The employer regularly provided updates of policies and regularly reviewed company policy and HIPAA requirements. The company's social media policy prohibits employees from posting information about any person being served that would identify any aspect of the individual or of the care being given to the individual being served.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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).

In discharge cases the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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. of Appeals 1992).

In the case at hand, the evidence in the record establishes that Ms. Schnede was aware of HIPAA policies which prohibit taking photographs of individuals being served in a caregiver setting. Ms. Schnede was also aware of DAC, Inc.'s cellphone use and social media policies which prohibited her from using a cellphone at work and especially while driving company vehicles containing clients. The company's social media policy prohibited the claimant from using her cellphone to take any pictures or depictions of individuals being served and prohibited the dissemination of pictures of that nature that might identify the individual who was being served. In addition, the employer regularly updated its policies and held meetings to ensure that all employees were aware of all policies and of the professional level of conduct expected by the employer. Ms. Schnede was discharged when she willfully violated these policies by using her cellphone for personal use while transporting company clients, photographing the clients and posting their depiction on social media. Each of the claimant's numerous violations constituted misconduct. Accordingly, the claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects that the claimant has not received any unemployment insurance benefits since filing a claim with an effective date of June 7, 2015 and, therefore, has not been overpaid unemployment insurance benefits as of the date of the administrative hearing in this matter.

DECISION:

The representative's decision dated July 2, 2015, reference 01, is reversed. Claimant was discharged for misconduct in connection with her work. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs