

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**VICTORIA L ANDERSON**  
Claimant

**APPEAL 21A-UI-16280-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BROADLAWNS MEDICAL CENTER**  
Employer

**OC: 05/09/21  
Claimant: Appellant (1)**

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Iowa Code § 96.5(1) - Voluntary Quit  
Iowa Code § 96.5(2)a - Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 19, 2021, (reference 02) unemployment insurance decision that denied benefits based upon claimant being discharged from work on May 6, 2021 for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on September 14, 2021. The claimant, Victoria Anderson participated and testified. The employer participated through Lindsay Fett (human resources director), with Lance Schmitt (acute care administrator, claimant's supervisor's supervisor) testifying.

**ISSUES:**

Did the claimant voluntary quit without good cause attributable to the employer? Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having heard the testimony and reviewed all of the evidence in the record, the administrative law judge finds: claimant's first day of employment with employer was October 6, 2003 and her last day worked was May 5, 2021. Claimant was discharged on May 6, 2021 for violating the company's confidentiality policy and HIPPA by accessing a patient's medical records without a medically necessary reason to do so. Claimant was a staff nurse in the emergency room. Claimant had received a copy of employer's personnel policies, was aware of the policy in question and of HIPPA. Claimant's most recent training on HIPPA was September 5, 2019. Claimant knew her position was in jeopardy due to prior write-ups and evaluations that informed claimant that future violations or failure to improve can result in further action, including termination. These prior violations are referenced to show claimant knew her position was in jeopardy. Employer did not rely upon these violations to terminate, but upon the records access incident in violation of policy and HIPPA as the sole reason for termination.

Ms. Blythe, claimant's immediate supervisor, received a complaint that claimant accessed a patient's medical records without reason to do so. Ms. Blythe reported this to Mr. Schmitt, her immediate supervisor. The two conducted an investigation, utilizing IT staff and determined that

claimant accessed a patient's medical records in violation of the employer's policies and HIPPA. Claimant was called in to meet with Ms. Fett and Mr. Schmitt on May 6, 2021 and confronted with the policy/HIPPA violation. The patient in question is a family member of claimant and upon arrival at the hospital, was a patient of claimant in the ER. Patient was later transferred to different unit, no longer being in the ER nor being a patient of claimant. It was when the patient was no longer a family member when claimant accessed the record. Claimant told employer the patient signed a medical release to allow her to have information. This release could not be found. Even if found, a medical release allows for the hospital to share information with the party covered by the release. It does not allow the party with the release to access the hospital's records to look for information on their own.

### **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:

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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dept of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant knew of the policy and HIPPA, but intentionally accessed this patient's records. The release is nowhere to be found and when asked about the family member/patient in question, they have recovered, been discharged and claimant had no explanation as to why she did not have them testify about the incident or whether a release was in fact provided. The employer testified the harm comes from breaching patient information because patients want their information protected and HIPPA requires it with a breach potentially resulting in accreditation issues, legal issues, lawsuits, and monetary penalties.

This behavior was contrary to the best interests of the employer and is disqualifying misconduct, even without a prior warning for this particular policy/HIPPA issue.

**DECISION:**

The July 19, 2021, (reference 02) 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.



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Darrin T. Hamilton  
Administrative Law Judge

September 21, 2021  
Decision Dated and Mailed

dh/mh