

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH M ZUKE**  
Claimant

**APPEAL NO. 10A-UI-00794-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEN MEMORIAL HOSPITAL**  
Employer

**OC: 12/13/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated January 12, 2010, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 22, 2010. Claimant participated. Employer participated by Abby Meester, human resources assistant, and Mary Dvorak, manager environmental services. The record consists of the testimony of Abby Meester; the testimony Mary Dvorak; the testimony of Sarah Zuke; the testimony of Amanda Betts; and Employer's Exhibits 1-11.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a hospital in Waterloo, Iowa. The claimant was hired on January 2, 2008 as a full-time housekeeper. She was terminated on December 18, 2009.

The incident that led to the claimant's termination occurred on December 16, 2009. Another employee had called about her FMLA leave and a message for Abby Meester, human resources assistant, was taken. A post-it note was put on Ms. Meester's screen that had the name of the employee; FMLA papers; and a phone number. The claimant was cleaning and happened to see the post-it note. She then saw the employee and by way of saying "hello" said that she (the claimant) had seen her (the employee) name on a post-it note in human resources and FMLA.

The employee reported to human resources that a housekeeper had known about her FMLA leave. She was unhappy that her personal information was in a place where others could read it. An investigation was conducted and it was determined that the claimant should be terminated. The claimant had had previous disciplinary steps taken to address to attendance

and performance issues. Since she was at stage 4 of the disciplinary process, the decision was made to terminate her.

The employer did have a written policy that prohibited disclosure of patient and hospital information. The claimant was aware of that policy.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct excludes good faith errors in judgment or discretion. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

After carefully reviewing the evidence in this case, the administrative law judge concludes that there is insufficient evidence to show a current act of misconduct. The claimant was cleaning a human resources office and a post-it note was on a computer screen with an employee's name and reference to FMLA papers. Why that note was in plain sight for anyone to see is unknown. The claimant did read the note and later, when she saw the employer, told

her about the note. She does not know why she did do other than as a way of saying hello. The claimant used extremely poor judgment in saying something to this employee, but there is no evidence that she deliberately violated the employer's policy on confidentiality. She said that she did not believe the information was confidential. An exercise of poor judgment in an isolated situation is not misconduct.

Although the claimant had had several previous disciplinary write-ups that played a role in her termination, none of these write-ups directly pertain to the final incident that led to termination. The administrative law judge concludes that the claimant's breach of confidentiality was not a current act of misconduct and therefore misconduct has not been established. The employer is entitled to terminate the claimant for business reasons, but there must be a showing of misconduct as defined by Iowa law to disqualify the claimant from receiving unemployment insurance benefits. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated January 12, 2010, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs