

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL SPELLIOUS
Claimant

APPEAL NO: 12A-UI-08836-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: 06-17-12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 10, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 16, 2012. The claimant participated in the hearing. Brandi Tiesman, Human Resources Director for Ambulatory Services, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time office receptionist for Genesis Health System from January 18, 1989 to May 24, 2012. The employer's corporate compliance privacy officer conducted a random audit and found six incidents where the claimant violated HIPAA regulations between April 28, 2011 and April 3, 2012. The employer's witness did not know when the audit was completed. The claimant accessed her ex-husband's medical records and admitted checking his records October 5, 2011, February 6, 2012, March 15, 2012, and April 3, 2012, without permission from her ex-husband or on a need-to-know basis. She knew her actions were a violation of HIPAA but wanted to see how he was doing after various medical procedures. After learning of the violations the employer terminated the claimant's employment May 24, 2012. Following the claimant's separation from the employer, her ex-husband wrote a letter stating he had no objection to the claimant accessing his records at any time. He had completed a form which would have allowed the claimant to look at his previous medical records several years ago but that only covered prior medical records rather than any future medical records.

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.

When confronted by the employer the claimant admitted accessing her ex-husband's medical records on four of the six dates discovered by the employer's audit. Each time she looked at his medical records it was a violation of HIPAA regulations. While it is unfortunate that this situation occurred with such a long-term employee, the claimant's decision to view her ex-husband's medical records on six occasions, four of which she admitted, was a violation of federal law. Consequently, the administrative law judge has no choice but to conclude the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The July 10, 2012, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs