

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBRA S HUFF
Claimant

CENTRAL IOWA RECOVERY
Employer

APPEAL 17A-UI-06671-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/04/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 26, 2017 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on July 19, 2017. The claimant, Debra S. Huff, participated personally. The employer, Central Iowa Recovery, participated through witnesses Tom Bedford and Deb Rohlf. Employer's Exhibits 1 – 10 were admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a qualified psychiatric rehabilitation practitioner. Claimant was employed from July 6, 2015 until May 3, 2017, when she was discharged from employment. Claimant was employed by Central Iowa Recovery during her entire period of employment, however, when claimant first started with the employer in July of 2015 Central Iowa Recovery had a payroll service agreement with Central Iowa Juvenile Detention and their employees fell under the Iowa Workforce Development account for Central Iowa Juvenile Detention. However, on October 1, 2016 the contract was re-negotiated and employees were then transferred to the Iowa Workforce Development account for Central Iowa Recovery.

Claimant's job duties included assisting adults with mental illness and supporting them in recovery. Courtney Underwood was claimant's immediate supervisor. As part of claimant's job duties, she was required to complete all required documentation, maintain strict confidentiality regarding all individuals served by the employer, and keeping her supervisor apprised of all pertinent information. See Exhibit 1. Claimant understood her job duties and received a copy of her job duties. See Exhibit 2. As part of her job duties, claimant received training regarding the

Health Insurance Portability and Accountability Act of 1996 (“HIPPA”) privacy laws and compliance regulations. See Exhibit 4.

The final incident leading to discharge occurred on April 27, 2017 when claimant was visiting the home of a client. Claimant left documentation from another client at the home of a client she had visited. This paperwork included the name of the client. See Exhibit 5. The client texted “[w]e found several forms you left here, at least one is filled out” to the claimant. See Exhibit 5. Claimant then texted back “[w]hose names on the form” to that client. See Exhibit 5. This prompted the client to review the paperwork and text claimant back the name of the client. See Exhibit 5.

On April 27, 2017, claimant was suffering from a migraine. She was ill and did not report to work for three consecutive workdays thereafter. She was not hospitalized but did take medication and visit with a physician. Claimant returned to work on May 3, 2017, and approximately ten minutes after she reported to work she was instructed to report to a meeting with Mr. Bedford and Ms. Rohlf.

During this meeting, Mr. Bedford instructed her to turn over her company telephone, where he reviewed the text messages between claimant and the client on April 27, 2017. After confirmation of the text messages, Mr. Bedford told claimant she was being discharged for a HIPPA violation and her failure to immediately report the violation to her supervisor. The parties discussed claimant tendering a resignation instead of being discharged, which claimant chose to tender to Mr. Bedford. However, claimant would have been discharged if she had not tendered a resignation. She would not have been allowed to continue working for this employer.

Claimant had previous discipline during the course of her employment. On August 26, 2016 claimant received two written reprimands, the first for failure to keep her files 100% completed and the second for her failure to keep her supervisor informed of the status of her clients. On September 2, 2016 claimant received a written reprimand for failing to speak to her supervisor about a safety concern with a client she had and she received a verbal reprimand for taking breaks to smoke cigarettes with clients. On December 21, 2016 claimant received two written reprimands, the first for failing to keep her client information current and the second for providing services to a client prior to pre-authorization paperwork being completed. On January 3, 2017 claimant received a verbal warning for having too many errors on her billing. The employer allows employees to have up to four errors on billing in one month and claimant had ten errors. On February 28, 2017 claimant turned in an insurance pre-authorization form late and was given a written reprimand. On March 2, 2017 claimant did not verify eligibility of a client for insurance coverage as she was required to do and was given a written reprimand.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the

evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the Administrative Law Judge finds that Mr. Bedford's and Ms. Rohlf's testimony is more credible than claimant's testimony.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't 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). 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).

The claimant's actions in leaving another client's medical paperwork with an unauthorized person may have been a genuine mistake. However, claimant's actions in asking the client to review another party's confidential medical information and her failure to immediately report the HIPPA violation to a supervisor was not an incident of carelessness or poor work performance. Claimant intentionally texted the client to review the paperwork, which created the HIPPA violation in the first place. Claimant was then dishonest by omission when she failed to immediately report the HIPPA violation, as was required of her, to her immediate supervisor. Claimant's testimony that she was so incapacitated from her migraine that she could not text or telephone her immediate supervisor about the violation is not credible. Claimant was clearly able to communicate on April 27, 2017 to her client via text message and was therefore able to text her supervisor about the same issue, but she failed to do so. It is clear that claimant's actions were intentional and they were a substantial violation of the client's policies and procedures, especially in light of the fact that claimant had been previously disciplined for failing to inform her supervisor of client matters.

The employer has a right to expect that an employee will not jeopardize the liability of the employer by intentionally violating policies that are in place. There is substantial evidence in the record to support the conclusion that claimant deliberately violated these rightful expectations in this case. Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

DECISION:

The June 26, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Claimant is denied benefits until such time as 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.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs