

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CATHERINE A CHAPMAN**  
Claimant

**APPEAL NO. 19A-UI-04333-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 04/28/19**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated May 17, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 21, 2019. Claimant participated personally. Employer participated by Rebecca Olsen, Laura Jaeger, Lisa Brewster, Kiley Bybee. Claimant's Exhibits A-V and Employer's Exhibits 1-6 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 1, 2019. Employer discharged claimant on May 1, 2019 because employer alleged that on multiple occasions claimant published videos to the public without removing materials that could be in violation of HIPAA regulations.

Claimant worked as a secretary 2 in the division of transplants under the department of surgery for employer. As a part of her duties since the fall of 2016, claimant was responsible for setting up recordings of discussions that were to be put out to the public after editing. Each of the teachings were to be privately maintained until after the claimant had edited out all of the potential HIPAA violations. After removal of any questionable naming of people, the claimant was only then to put the information in a public portal. Claimant received electronic training on these procedures prior to the installation of the Panopto system that allowed the recording, editing, and publishing of the talks.

Claimant had been using this system for a few years. In the fall of 2018, claimant was alerted that she did not remove private information out of the recordings before making them publicly available. Claimant was given additional training with the Panopto system and given additional HIPAA training. Claimant and her supervisor went over the step-by-step process in editing the materials and claimant's supervisor testified that claimant appeared to understand how to

properly edit and how to first make sure that the recording was in private view until it was edited and placed into public view.

Because of employer concerns with claimant's placing recordings in the public view without having edited out inappropriate materials, claimant was given additional training in March of 2019. Shortly after claimant's additional trainings, claimant was found to not have edited out sensitive materials on three different recordings made in late April through early May, 2019. Claimant was terminated for continuing to not properly follow procedures after training and retraining.

Claimant argues that she was not formally trained in the operation of Panopto. Claimant additionally argued that other people had access to Panopto and they may have changed settings after claimant set them up properly. Employer agreed that claimant's training was self-guided, but stated that IT professionals were available to claimant and further stated that claimant showed in a step-by-step manner that she knew each of the appropriate steps to take.

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

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 Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id. In this matter, claimant offered that others might have reset the settings after claimant had properly configured Panopto for each recording. As claimant offered no proof for this allegation, it is given little weight.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant repeatedly violated employer's policy concerning improper publications of videos made using the Panopto recording system after trainings and claimant stated her competency to properly operate the system. Claimant's actions created potential HIPAA violations.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew or should have known of the importance of not publishing videos that could contain sensitive materials. The fact that claimant did not check, and double check to ensure that the videos were kept private and not published until they'd been fully edited placed employer at risk for HIPAA violations. These actions occurred after training and retraining and claimant proving she knew that proper steps to take. As such, claimant not ensuring that materials were kept private until edited amounts to misconduct. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated May 17, 2019, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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