

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHARON HARTMAN**  
Claimant

**APPEAL NO: 06A-UI-08520-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GENESIS HEALTH SYSTEM**  
Employer

**OC: 07/16/06 R: 04  
Claimant: Respondent (2)**

Section 96 5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Genesis Health Group (employer) appealed an unemployment insurance decision dated August 16, 2006, reference 01, which held that Sharon Hartman (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was on September 11, 2006. The claimant participated in the hearing. The employer participated through Heidi Kahly-McMahon, Human Resources Manager and Pat Retzl, Operations Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for disqualifying misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a per diem office receptionist from January 31, 2005 through July 14, 2006 when she was discharged. She was discharged for violation of the employer's confidentiality policy and the HIPAA privacy law, which prohibits the unauthorized disclosure of patient information. The employer reviewed the HIPAA requirements with the claimant at the time of hire and she also signed a confidentiality agreement. The claimant was tested on her knowledge of the confidentiality requirements and successfully passed the test. She also worked on a software program, called Healthstream, which is a computer based training program that covers confidentiality. Additionally, the confidentiality policy is reviewed with employees annually and the claimant's one-year anniversary was in January 2006. Violation of the confidentiality policy and the HIPAA requirements could result in termination.

The employer has several clinics and the claimant worked in at least two of these clinics. The employer became aware of the claimant's policy violations on July 12 and 13, even though one

breach occurred in April 2006. The claimant worked at the Fairway Clinic and the Psychology Associates Clinic. On July 12, 2006, the employer was contacted by a provider from Psychology Associates and the provider said they had some concerns about the claimant "speaking out of turn." The claimant discussed the medical condition of the spouse of one of the clinic's physicians and told a co-worker the doctor's wife had cancer. It was decided the claimant would no longer work at that particular facility but the employer was subsequently notified of an additional violation. On July 13, 2006, the same provider notified the employer of information its employees had provided once it was known the claimant would no longer work at their clinic. A supervisor from Fairway was a patient at Psychology Associates and the claimant was aware of this fact because she worked in both clinics. The Fairway employees had no idea why their supervisor was not working and apparently questioned why the supervisor just walked off the job. The claimant took it upon herself to inform the co-employees that their supervisor was a patient at Psychology Associates. This occurred in April 2006 but the supervisor and employer did not become aware of it until July 13, 2006 when the other employees revealed what the claimant had told them. When the claimant was questioned, she admitted her violations but claimed she did not have a wrongful intent.

The claimant filed a claim for unemployment insurance benefits effective July 16, 2006 and has received benefits after the separation from employment.

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

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

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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for breach of confidentiality and violation of federal HIPAA requirements. The HIPAA Privacy Rule, or Standards for the Privacy of Individually Identifiable Health Information, issued by the Department of Health and Human Services implements the requirement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). It establishes national standards for maintaining the confidentiality of protected health information (PHI); which effectively prohibits the release of that information without the patient's express written permission, except as provided by law.

The claimant knew and understood both the confidentiality policy and the HIPAA requirements and admittedly violated both on two separate occasions but contends she had good intentions. By violating these privacy regulations, the claimant could have subjected the employer to legal liability. Having a good motive does not abrogate the claimant's responsibility to follow the employer's policy and federal law. In fact, the effect of the HIPAA is that it completely eliminates all uncertainty as to when it is and is not acceptable to release a patient's health information. The claimant did not have the supervisor's permission to release such private information and her actions can never be undone. The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated August 16, 2006, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$840.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/cs