

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

LINDA M PARCELL
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Appeal Number: 05A-UI-03468-CT
OC: 10/31/04 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Heartland Home Care, Inc. (Heartland) filed an appeal from a representative's decision dated March 28, 2005, reference 03, which held that no disqualification would be imposed regarding Linda Parcell's separation from employment. After due notice was issued, a hearing was held by telephone on April 27, 2005. Ms. Parcell participated personally and offered additional testimony from Jarita Heidebrink and Shelly Allen. The employer participated by Deb Strobel, Administrator, and was represented by Joel Yates, Attorney at Law. Exhibits 1 through 16 were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Parcell was employed by Heartland from May 7, 2004 until March 3, 2005 as an LPN. She worked from 20 to 35 hours each week providing in-home care for infants with special medical needs. At the time of hire, she was provided written materials regarding the confidentiality of client information. Ms. Parcell received a perfect score on a test given on May 12, 2004 to test her knowledge of HIPAA requirements. The employer's policy provides for immediate termination for violation of HIPAA standards.

On July 9, 2004, the employer was advised by a client that Ms. Parcell had indicated she would rather be working on a pediatric case in Ottumwa. She did not disclose the name of any particular Heartland client in Ottumwa. Ms. Parcell did not at that time know that stating the geographic location of a client was prohibited. There were no further incidents of this nature thereafter. On November 10, the employer met with Ms. Parcell to discuss issues of confidentiality raised by her daughter's presence in a client's home while Ms. Parcell was working. Her daughter was taking her to and from work and would wait outside in the car while Ms. Parcell finished her work. It was the client who invited the daughter into the home to wait rather than remaining in the car. The client learned that the daughter is a nursing student and the two had conversations regarding the medical condition of the client's infant child. The client testified that she felt she and the daughter had become friends. Because of this relationship, the daughter invited the client to her baby shower. Ms. Parcell did not allow her daughter to be in the home while she was working after the November 10 counseling.

The November 10 counseling also addressed the issue of Ms. Parcell taking a client and infant to the state fair in August without authorization from Heartland. The trip was made at the request of the client. Ms. Parcell was not aware that transporting a client to other than medical appointments was prohibited. The matter is not specifically addressed in Heartland's policies. The employer felt Ms. Parcell used poor judgment in taking an infant with special medical needs to an environment where he could be exposed to multiple viruses. There were no further issues of her taking clients on unauthorized trips after the meeting of November 10.

On December 3, 2004, Ms. Parcell was involved in a fact-finding interview with the employer and Workforce Development. During the interview, Ms. Parcell questioned her daughter about the name of a client and where the client lived. The employer considered this a breach of confidentiality but did not take any disciplinary action as a result. The final incident that caused the discharge occurred over the weekend of February 26. A client called Ms. Parcell on her cell phone and the two discussed Ms. Parcell's work schedule and issues related to the client's infant. Ms. Parcell had given clients her home and cell telephone numbers at their request. Clients would sometimes contact her directly rather than going through Heartland's established procedures. Because employees are prohibited from having contact with clients outside of the work environment, Ms. Parcell was discharged on March 3, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Parcell was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, it is concluded that the employer has failed to satisfy its burden of proof. The first issue of breach of

confidentiality occurred in July of 2004 when Ms. Parcell made reference to a client in Ottumwa but did not give a specific client name. Because she was not aware at the time that she could not refer to the geographic location of a client, her actions did not constitute a deliberate violation of the employer's standards.

There is no dispute that Ms. Parcell's daughter was in a client's home while Ms. Parcell was working there. However, the daughter was in the home at the invitation of the client and not at Ms. Parcell's request. Confidentiality is the right of the client and, therefore, the client has the right to determine who will be privy to that client's information. Moreover, the conduct did not continue after November when it was addressed with Ms. Parcell. It is true that Ms. Parcell's daughter did invite this same client to her baby shower. According to the client, she and the daughter had become friends. There was no evidence that the invitation was extended at Ms. Parcell's request in order to have her daughter benefit financially from her working relationship with the client.

Ms. Parcell acknowledged that she had given her personal telephone numbers to clients. However, it was only at their request. There was no evidence that Ms. Parcell initiated calls to clients during times she was not assigned to work with them. Ms. Parcell denied receiving any policy that addressed off-duty contacts with clients. There was no acknowledgement signed by her establishing her receipt of any policy respecting off-duty contacts. The calls initiated by the clients were all work-related. At most, Ms. Parcell used poor judgment in giving out her numbers and in not re-directing clients to Heartland when they called her. However, her conduct did not evince a willful and wanton disregard for the employer's interests or standards.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated March 28, 2005, reference 03, is hereby affirmed. Ms. Parcell was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/pjs