

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JAMES P ZIELINSKI**  
Claimant

**APPEAL 18A-UI-09923-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JEFFERSON COUNTY HOSPITAL**  
Employer

**OC: 09/02/18**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r.871-24.32(8) – Past Acts of Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 21, 2018 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was held on October 15, 2018. The claimant, James P. Zielinski, participated and was represented by Amanda Jansen, Attorney at Law. The employer, Jefferson County Hospital, participated through Sarah Beasley, Human Resources Manager; and Jacque Bookin Nosbisch, Chief Nursing Officer. Employer's Exhibits 1 through 18 were received and admitted into the record without objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a registered nurse working for Dr. Beth Hothan-Zielinski, from April 9, 2013, until August 24, 2018, when he was discharged. On July 5, 2018, claimant was working and preparing to assist Dr. Zielinski in surgery. That day, an orthopedic case was placed before the case claimant was working, causing a delay for claimant and Dr. Zielinski. Claimant went to the assistant supervisor and expressed frustration that this orthopedic case had bumped the case to which he was assigned. Later that day, the staff members assigned to the orthopedic case were unable to proceed with the patient case because claimant was logged into the EPIC system in this patient's chart. Claimant had no treatment or healthcare operational need to be accessing this chart. Ambulatory Care Unit Assistant Nurse Manager Deseo Coop reported this issue to Bookin Nosbisch, who in turn reported it to CEO Eric Hunger. Hunger then reported the issue to Beasley as a potential HIPAA violation.

The employer commenced an investigation into claimant's conduct. The employer's compliance, Jan Birch, officer worked with the clinical IT department to pull detailed information from the EPIC system to determine what patient records claimant accessed. Birch and the investigative team then cross-referenced these records against Dr. Zielinski's patient records to

determine which patient records claimant accessed for legitimate business purposes. The employer concluded that claimant accessed nine patient records that had no connection to Dr. Zielinski. (Exhibit 13) Additionally, at some point during the investigation, Hunger told claimant that a potential HIPAA violation was being investigated. There is no indication that claimant was told his job was in jeopardy at that time. (Exhibit 17) After identifying the nine problematic incidents, the employer consulted with leadership and the investigative officer and had a discussion with Hunger. Then, the employer made the formal decision to discharge claimant. Claimant denies accessing patient information improperly.

The employer's Confidentiality Policy restricts an employee to accessing only the confidential healthcare information that is required for the employee to perform his job responsibilities. (Exhibit 14, page 2) Claimant had received a warning in April 2015 after disclosing a patient name in the hallway during a conversation with a co-worker. (Exhibit 5) He had no other warnings for HIPAA or confidentiality violations. Claimant was trained on HIPAA annually, and he was aware of the importance of protecting confidential patient information.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Accordingly, benefits are allowed.

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(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.

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a “past act.” Where an employer gives seven days’ notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp’t Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp’t Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

In this case, the final incident that triggered the employer’s investigation that ultimately led to claimant’s discharge occurred on July 5, 2018. Claimant was not discharged until August 24, seven weeks later. While claimant was told at some point during the investigation that the employer was looking into a potential HIPAA violation, he was never informed that his job was in jeopardy. Furthermore, claimant was allowed to continue working during the investigation, indicating the employer did not view claimant’s alleged conduct as serious. The administrative law judge understands that the employer’s investigation was quite involved and took several weeks to complete. However, the employer has not sufficiently justified the seven-week delay between the final incident and the date of discharge. The employer has not met its burden of proving that claimant was discharged from employment for a current act of misconduct. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The September 21, 2018 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn