

**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**

**DONNA E HEBERT  
1242 N 11<sup>TH</sup> ST  
FT DODGE IA 50501**

**TRINITY REGIONAL MEDICAL CENTER  
ATTN TED VAUGHN - ACCOUNTING  
802 KENYON RD  
FT DODGE IA 50501**

**Appeal Number: 04A-UI-00422-CT  
OC: 12/14/03 R: 01  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Trinity Regional Medical Center (Trinity) filed an appeal from a representative's decision dated January 8, 2004, reference 01, which held that no disqualification would be imposed regarding Donna Hebert's separation from employment. After due notice was issued, a hearing was held by telephone on February 3, 2004. Ms. Hebert participated personally. The employer participated by Beth Sullivant, Manager of Health Information Management, and Ted Vaughn, Manager of Human Resources. Exhibits One through Ten were admitted on the employer's behalf. A letter sent by the employer after the hearing record was closed was not considered by the administrative law judge as there had been no request to leave the record open.

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. Hebert was employed by Trinity from November 23, 1998 until December 3, 2003. She was last employed full time as a clerk in medical records. The decision to discharge her from the employment was based on the fact that she accessed patient records in violation of the employer's written policy, of which she was aware.

The employer's policies prohibit employees of the facility from accessing confidential patient information unless required by their job function. The prohibition includes records of the employee's family members. On or about November 14, 2003, Ms. Hebert accessed the records of her granddaughter who was a patient in the facility at the time. She wanted to determine where the granddaughter was sent after being seen in the emergency room. She could have obtained the desired information without accessing patient records. As part of her job, she was required to file medical documents in patient charts. Her granddaughter's emergency room report would have been within the documents she was required to file. The employer did not have information as to how many computer screens or which screens were accessed by Ms. Hebert. The fact that she accessed the records came to light during a routine audit.

After Ms. Hebert's separation, another employee stated during a meeting that she had accessed her son's records to obtain his social security number. This individual received only an admonishment not to engage in such conduct in the future. Ms. Hebert was discharged rather than counseled because she had been disciplined about other matters. She received a warning on November 9, 2001 because she was not performing her job satisfactorily. She also received a warning on September 26, 2003 because of problems with her filing. She was told that she had shown improvement since the warning of September 26.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Hebert 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Before a disqualification from benefits may be imposed, the evidence must establish that the final act which precipitated the discharge constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). The final act which triggered Ms. Hebert's discharge was the fact that she accessed her granddaughter's records to find out where she went after being treated in the emergency room. The employer failed to establish that she looked at computer screens that would have provided more information than the granddaughter's room number or other information Ms. Hebert would not have known in her capacity of grandmother. Moreover, given Ms. Hebert's job of filing medical reports, it appears that she was not attempting to obtain any information from the computer that she did not already have access to by virtue of the documents she was filing.

Given the lack of formal disciplinary action against the individual who accessed her son's records to obtain the social security number, the administrative law judge cannot conclude that Ms. Hebert's conduct constituted a willful and wanton disregard of the employer's standards. At most, her actions constituted an act of negligence and not misconduct within the meaning of the law. It is true that Ms. Hebert had been disciplined in the past, the last occasion on September 26, 2003. However, she had shown improvement since the warning. But for her

conduct in accessing her granddaughter's records, she would not have been discharged on December 3.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to establish that Ms. Hebert deliberately and intentionally disregarded the employer's standards or that she engaged in a course of conduct she knew to be contrary to the employer's interests. 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 stated herein, benefits are allowed.

DECISION:

The representative's decision dated January 8, 2004, reference 01, is hereby affirmed. Ms. Hebert was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/b