

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA M ROSZELL
Claimant

APPEAL NO. 10A-UI-16368-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SARTORI MEMORIAL HOSPITAL
Employer

**OC: 10/24/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Sartori Memorial Hospital filed a timely appeal from a representative's decision dated November 22, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice a telephone hearing was held on January 12, 2011. Claimant participated personally. The employer participated by Ms. Deborah Tyler, Human Resource Officer and Ms. Ruth Lampe, Lab Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Claimant was employed by Sartori Memorial Hospital from July 10, 2006 until August 27, 2010 when she was discharged from employment. Ms. Roszell held the position of full-time lab technician and was paid by the hour. Her immediate supervisor was the lab manager, Ruth Lampe.

Ms. Roszell was discharged based upon the complaints by two unidentified hospital employees who alleged that Ms. Roszell had disclosed confidential patient information and showed a cell phone depiction of a fetus. The unidentified employees who complained indicated they believed that the information and the depiction related to an emergency room situation at the hospital that Ms. Roszell had responded to in her duties as a lab technician. The employees who had complained also alleged that Ms. Roszell had told them not to disclose the information or the depiction and that the claimant had stated that if investigated she would claim that the depiction had been taken off the "internet." The hospital investigated as they concluded if true, claimant's actions would be a clear violation of the hospital's confidentiality policy, a violation of HIPAA, and a violation of the hospital's electronic media policy.

When questioned about the matter Ms. Roszell denied the allegation that she had disclosed patient information or had shown a depiction of the fetus. Subsequently the claimant stated it

was her belief that the unidentified employees who had complained had mistaken an image of a fetus that Ms. Roszell had downloaded onto her cell phone for informal educational purposes, for that of a hospital patient's.

Based upon the serious nature of the allegations made against Ms. Roszell, a decision was made to terminate the claimant from employment.

REASONING AND CONCLUSIONS OF LAW:

The employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

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.

In this matter Ms. Roszell was discharged by Sartori Memorial Hospital based upon the allegations of one or more unidentified witnesses who alleged that Ms. Roszell had spoke to them about confidential medical matters of an emergency room patient and had further alleged that Ms. Roszell had shown cell phone depictions of a medical specimen that had been involved with the patient's care. When questioned the claimant denied violating the hospital's confidentiality rule, the HIPAA regulations or the hospital's electronic device policies stating that the depiction she had shown other workers was that of a two-week-old fetus that Ms. Roszell had downloaded from an online book because she was interested in the subject as the claimant herself was now pregnant. Based upon the allegations of the unidentified witnesses and the excuse given by Ms. Roszell that was the same as the witnesses said the claimant would use, a decision was made to terminate Ms. Roszell from her employment with the hospital. The employer had further concluded the claimant had had the opportunity to take the depiction of the medical specimen when she was performing her duties in the emergency room. The employer's witnesses, however, had no firsthand knowledge of the events in question. For business reasons the employer chose to rely upon anonymous hearsay evidence in support of its position. In contrast, the claimant appeared personally and provided sworn testimony denying the employer's allegations and providing a plausible explanation.

While hearsay evidence is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony especially if the hearsay evidence is anonymous. For these reasons the administrative law judge concludes that the employer has not sufficiently met its burden of proof in showing misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated November 22, 2010, reference 01, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs