

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDA S BLAKEY

Claimant

APPEAL NO. 15A-UI-08429-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 07/05/15

Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 23, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on June 22, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on August 18, 2015. Claimant Brenda Blakey participated. Mary Eggenburg represented the employer and presented additional testimony through Joanne Higgins and Joannie Hankemeier. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and benefits approved, but offset against a prior overpayment.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brenda Blakey was employed by The University of Iowa as a full-time custodian from 2010 until June 22, 2015, when the employer discharged her from the employment due to an alleged breach of confidentiality that occurred on May 26, 2015. Throughout the employment, Ms. Blakey performed her custodial duties at the University of Iowa Hospitals and Clinics (UIHC). At the start of the employment, Ms. Blakey received training on HIPAA requirements. Thereafter, Ms. Blakey received annual HIPAA training. During the last three years of the employment, Ms. Blakey was assigned to work in the Emergency Treatment Center (ETC). Ms. Blakey understood that she was not to share information regarding any patient at the ETC and, because she would not necessarily know who was and was not a patient, that she was not to share information regarding any person she encountered at the ETC while performing her duties. Joannie Hankemeier, Facilities Services Coordinator, was Ms. Blakey's immediate supervisor during the last year of the employment.

On May 26, 2015, Ms. Blakey was working in the ETC when she observed a person she believed to be the former relative by marriage of fellow custodian Daun Knapp. Ms. Blakey mentioned to Ms. Knapp that she had seen the person in question and that the person did not look good. Ms. Blakey had observed the person exiting an examination room. Ms. Knapp had observed that another person was laying on the gurney in the particular examination room and had concluded that Ms. Knapp's former relative was not a patient. On June 2, 2015, Ms. Knapp reported to Ms. Hankemeier that Ms. Blakey had disclosed to Ms. Knapp information regarding Ms. Knapp's relative's presence in the ETC. Ms. Hankemeier forwarded the concern to Joanne Higgins, Human Resources Manager for Environmental Services at the UIHC. On June 3, 2015, Ms. Higgins and Ms. Hankemeier spoke with Ms. Knapp. On June 9, 2015, the employer notified Ms. Blakey that she was being placed on administrative leave pending the outcome of the employer's investigation.

On June 10, 2015 the employer interviewed Ms. Blakey regarding the alleged HIPAA violation. Ms. Blakey confirmed that she was familiar with and understood the HIPAA regulations. Ms. Blakey confirmed that she understood she was to clean rooms as assigned, but was not supposed to talk about anything she saw in the ETC. Ms. Blakey told the employer she "could have" said something about the coworker's relative. In speaking with Ms. Blakey, the employer became concerned that the employer might have received erroneous information from Ms. Knapp concerning the date on which Ms. Blakey had seen Ms. Knapp's relative. After the employer conducted further investigation to confirm the correct date of the encounter, the employer proceeded with a Loudermill hearing and then with discharging Ms. Blakey on June 20, 2015.

Earlier in the employment employer had issued two reprimands to Ms. Blakey for allegedly interfering with patient care. The reprimands were issued in May 2014 and December 2014 after hospital medical and/or nursing staff complained that Ms. Blakey was remaining in areas of the ETC where she did not need to be in order to perform her duties. Ms. Blakey had been to clean rooms.

Ms. Blakey established a claim for benefits that was effective July 5, 2015 and received unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

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).

The employer has the burden of proof in this matter. See Iowa Code section 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 is not necessarily serious enough to warrant a denial of unemployment 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. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty 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 Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence fails to establish that the person Ms. Blakey saw in the ETC and commented about was a patient. Accordingly, the evidence fails to establish a HIPAA violation, since there was no disclosure of a patient's medical information. The weight of the evidence

does establish a violation of the employer's rather broad rule that prohibited Ms. Blakey from mentioning anyone she encountered in the ETC. The evidence does not establish misconduct that rises to the level of substantial misconduct necessary to disqualify Ms. Blakey for unemployment insurance benefits. The weight of the evidence indicates that the prior concerns of Ms. Blakey loitering in the ETC involved circumstances wherein Ms. Blakey had a legitimate work-related reason to be in the area in question.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Blakey was discharged for no disqualifying reason. Accordingly, Ms. Blakey is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 23, 2015, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs