

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TARA L MESCHER
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 17A-UI-12272-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/15/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 17, 2017, (reference 01) unemployment insurance decision that denied benefits based on her discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on December 19, 2017. The claimant participated and testified. The employer participated through Senior Director of Human Resources David Bergeon and Senior Compliance Coordinator Andrew Cox. Also present on behalf of the employer, but not testifying, was Mary Eggenburg. Employer's Exhibits 1 and 2 and claimant's Exhibits A and B were received into evidence.

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 as an advanced registered nurse practitioner from September 26, 2017, until this employment ended on October 12, 2017, when she was discharged.

On October 5, 2017, claimant received a text message from a patient, who was also a coworker. Claimant was off work that day, but her patient was at work and in crisis. Claimant testified she asked the patient if she wanted to go home or to the emergency room, but she did not. According to claimant she then advised the patient she would have to talk to her nurse manager about her situation and would need to disclose information about her medical condition. Claimant testified she got verbal consent from the patient to share her private medical information with the nurse manager. Following this conversation claimant sent a text message to the nurse manager that contained information about claimant's medical condition and treatment. The employer learned about this disclosure on the same day and requested a meeting with the claimant.

Claimant met with Bergeon and Cox to discuss the situation. Claimant testified she admitted to Bergeon and Cox that she had sent the text message, but told them she had been given verbal consent by the patient to do so. Cox testified when Bergeon asked claimant a follow-up questions regarding whether she got specific permission to send diagnosis and treatment information, claimant paused and responded she was not sure. Bergeon and Cox met with the patient on October 9, 2017. The patient confirmed she was being treated by claimant. Bergeon and Cox testified the patient denied consenting to claimant sharing information on her diagnosis and treatment. Cox testified the patient told them she only gave permission for claimant to ask about a change in work schedule. Cox further testified, when the patient was shown the text claimant sent, she confirmed she had not given permission for claimant to share any of her specific diagnosis or treatment information. According to Cox the patient was visibly upset and crying when she discovered her nurse manager had been given this information. Claimant testified this patient sometimes gets so upset and stressed that she forgets conversations and she must have forgotten giving verbal consent to share this information. Claimant was subsequently discharged for violating her patient's privacy under both the employer's policies and governing HIPAA regulations. (Exhibit 1). Claimant had no prior disciplinary action.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events. Both Bergeon and Cox testified the patient clearly indicated she did not give consent for her medical information to be shared, though she admitted she did give consent for claimant to speak to her supervisor about her schedule. Claimant's only response was that the patient must have forgotten the conversation due to her stress level. This rational does not follow, as the patient clearly did remember the portion of the conversation where she gave permission for claimant to speak to her supervisor about her schedule. This version of events is further supported by Cox's testimony that the patient became visibly upset upon learning her medical information had been disclosed and that claimant told Bergeon she was not sure if she had gotten specific permission to disclose diagnosis and treatment information.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has an obligation to protect the privacy of its patients. The employer has presented substantial and credible evidence that claimant violated both its internal rules regarding patient privacy as well as governing HIPAA regulations. While claimant had no prior

disciplinary action, this conduct shows a deliberate disregard for the interest of the employer and is disqualifying, even without prior warning. Benefits are denied.

DECISION:

The November 17, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs