

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

PAULA J MCCONNELL
3046 COPPOCK RD
WASHINGTON IA 52353 9461

THE UNIVERSITY OF IOWA
c/o DAVID BERGEON EMP REL
121 "R" UNIV SVC BLDG
IOWA CITY IA 52242

Appeal Number: 06A-UI-02351-DWT
OC: 01/29/06 R: 03
Claimant: Appellant (2)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Paula J. McConnell (claimant) appealed a representative's February 15, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of The University of Iowa (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 15, 2006. The claimant participated in the hearing. David Bergeon, Kim Wilkerson and Tammi Craft appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 2001. The claimant worked as a full-time medical record coder-abstractor. Wilkerson was the claimant's supervisor.

The claimant understood she was only allowed to access information about patients on a data base to obtain information she needed for her job. The employer's policy indicates an employee can be discharged if the employee accesses a medical record for reasons other than business-related reasons. The claimant accesses 50 to 80 patient files a day to perform her job.

A co-worker assaulted the claimant in November. The claimant knew the co-worker did not want her husband to know what she had done at work. Since this co-worker appeared to act differently than she normally acted, the claimant seriously thought about contacting the co-worker's husband to let him know there was something wrong with his wife. The co-worker was also a patient. The claimant accessed the co-worker's medical records one time in December for the purpose of obtaining her home phone number so the claimant could contact the co-worker's husband. The claimant never called the co-worker's home phone number or contacted the co-worker's husband.

The claimant knew she had violated the employer's rules by looking up the co-worker's home phone number. The claimant's conscience got the better of her. On January 4, 2006, the claimant told Wilkerson she had accessed her co-worker's records to find her home phone number. The employer did not take any action until January 11 when two employees registered complaints that the claimant had accessed their medical records without authorization.

The employer then discovered the employer's computer records indicated the claimant had accessed her co-worker's medical files three times and had accessed her husband's former sister-in-law's records two times. The claimant denied accessing any record that was not for work-related purposes with the exception of the one time in December when she accessed her co-worker's files to obtain her home phone number.

On January 30, 2006, the employer discharged the claimant because she violated the employer's policy about accessing medical information for reasons other than to perform her job.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a

right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The claimant acknowledged she intentionally accessed a co-worker's medical records for the sole purpose of obtaining the person's home phone number. Even though the employer's computer records indicate the claimant accessed the co-worker's record two more times in December 2005, the amount of time the claimant was in the file these times was minimal and could be the result of accidentally inputting a wrong number. Even though the computer's records indicate the claimant accessed her husband's former sister-in-law's records two times, the amount of time in these files was again minimal. The facts do not establish that with the exception of one time, the claimant intentionally accessed the records of two employees/patients for reasons that were not work-related.

The claimant knew she had violated the employer's policy when she obtained the home phone number of a co-worker. As a result of her conscience, the employer learned about this on January 4, 2006. The employer, however, did not take any action until January 11 or after two employee/patients registered complaints.

The facts establish the claimant used poor judgment once when she accessed a co-worker's files to obtain her home phone number. This isolated incident is not condoned, but does not constitute work-connected misconduct. Even if this one incident amounted to work-connected misconduct, the employer knew about this situation on January 4, 2006. Since the employer did not discharge the claimant until January 30, this one incident does not amount to a current act of work-connected misconduct.

The administrative law judge recognizes that the employer concluded the claimant accessed the records for two people multiple times (five) during the year. If the facts had established the claimant intentionally accessed these records that many times, then work-connected misconduct would have been established. The facts establish by a preponderance of the evidence that the claimant only accessed a co-worker's record one time in December. Therefore, the claimant did not commit work-connected misconduct. As of January 29, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 15, 2006 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of January 29, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/s