

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GINA S ADKISSON
Claimant

IMMANUEL
Employer

APPEAL 22A-UI-04493-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/05/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871—24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the January 31, 2022, (reference 02) unemployment insurance decision that allowed benefits based upon the determination that claimant was discharged from employment, but not due to disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on March 23, 2022. The claimant, Gina S. Adkisson, participated personally. The employer, Immanuel, participated through testifying witnesses Karel Clark, Abigail Harper, and Alyssa Johansen. Employer's Exhibits 1 and 2 were admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a participant care aide from September 27, 2021, until this employment ended on December 10, 2021, when she was discharged.

In approximately early November 2021, claimant was counseled for a violation of the employer's HIPAA policy. A participant asked claimant how another participant was doing, and claimant provided the inquiring participant with information that was protected by the HIPAA policy. She was counseled by her supervisor, Harper, for the transgression. She did not understand this counseling to be disciplinary in nature. She was not warned that her job would be in jeopardy if she engaged in similar conduct in the future.

On December 7, 2021, claimant was speaking to a colleague in a common area. A participant was engaged in an activity in another room, but there was no door separating claimant and the participant, and the participant may have been able to hear claimant. Claimant informed her colleague that another participant had died. Another of claimant's coworkers overheard and reported the incident to Harper. Claimant, Harper, and Ashley Snodgrass, another supervisor, discussed the incident in a meeting later that day. Snodgrass characterized the discussion as a verbal warning. Claimant specifically inquired whether her job was in jeopardy as the result of this second violation of the employer's HIPAA policy. She was told there would likely be counseling and some retraining, but her job was unlikely to be jeopardized because of this incident.

On December 10, 2021, claimant was out sick. She received a call from Harper informing her that her employment had been terminated "due to the situation."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code 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 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). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Claimant had received counseling about violation of the HIPAA policy in the past. However, she was not explicitly warned that future similar conduct would or could result in her discharge, nor did she understand the counseling issued to her to be disciplinary in nature. Indeed, even as of the date of the final incident, claimant was reassured that the result would likely be training and counseling, not discharge. The employer has not carried its burden of establishing that claimant engaged in conduct despite explicit previous warning, or that she was so negligent in her behavior that she committed disqualifying misconduct. No disqualification is imposed.

Because the separation is not disqualifying, the issues of overpayment, repayment, and participation are moot at this time.

DECISION:

The January 31, 2022, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and participation are moot.



Alexis D. Rowe
Administrative Law Judge

April 5, 2022
Decision Dated and Mailed

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