

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TOODIE M HUNT
Claimant

BERST DENTAL PC
Employer

APPEAL 15A-UI-11319-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 1, 2015 (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on October 26, 2015. The claimant participated personally. The employer participated through Dr. Jennifer Berst, Owner. Dr. Martin Berst and Shawnee Nebraska also testified for the employer. Employer's Exhibits One through Five were admitted 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: The claimant was employed part time as a front desk scheduling clerk beginning July 6, 2015 and was separated from employment on September 8, 2015; when she was discharged.

The claimant was responsible for inputting the dental patients' insurance information and submissions, which in turn affected the treatment of patients and payment to the employer. The claimant had previously worked for similar employers and indicated she had experience with software used by the employer at the time of hire (Employer's Exhibits One and Two). It was discovered by the employer that the claimant was making repeated errors, causing delays in payments and misinformation provided to patients. In turn, this affected the treatment plans for patients and placed strain on the relationships with the patients. At the claimant's 30-day evaluation meeting, the claimant was confronted by Dr. Jennifer Berst about how her job was going and errors being made. The claimant told Dr. Berst that sometimes she would look at the computer and her mind would just go blank. The employer emphasized the importance of accuracy and handling the software accurately. Following the meeting with Dr. Berst, the employer conducted a follow up investigation on the claimant's work. The employer's investigation revealed the claimant failed to properly execute her job duties and repeatedly entered inaccurate information, without explanation, including another 30 to 40 errors in billing and insurance information. She was subsequently discharged.

The claimant asserted at the hearing that she did not believe she was responsible for that many errors, and a personality conflict between her and Ms. Nebraska contributed to the separation. The claimant alleged she left her computer screen unlocked and employees may have tampered with her open records, causing the errors. In addition, the claimant stated she was unable to do her job because she would receive daily prank calls from the employees, "pretending" to be patients to see how she handled them. The claimant did not report these concerns or explanations to the employer while employed, and the employer denied knowledge of any of the asserted conduct.

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 § 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).

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). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). In this case, the claimant was responsible for accurately inputting and reading insurance information, related to the employer's dental patients. Errors could affect the patient's treatments, delay in payments to the employer, and lost profits when the employer had to recoup the expenses for errors. The claimant was aware of the importance of accuracy, and had been given a warning, as well as training. It cannot be ignored that the claimant also promoted her experience and usage in the software used by the employer at the time of hire (Employer exhibits and two).

The case law in Iowa demonstrates that carelessness amounting to disqualifying misconduct occurs when an employee commits repeated instances of ordinary carelessness and is repeatedly warned about such conduct. *Greene v. Employment Appeal Board*, 426 N.W.2d 659, 661 (Iowa App. 1988) (assistant restaurant manager committed disqualifying misconduct through repeated "unintentionally careless demeanor" after being warned about such conduct). 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.*

It cannot be ignored that during the hearing, the claimant was evasive and combative, offering conflicting explanations, including suggesting she was prank called by the employer as training and that other employees would manipulate records entered by her, on her unlocked computer. The claimant did not bring forth these concerns to the employer while employed. After the 30-day evaluation, the employer estimated that another 30 to 40 errors made by the claimant were discovered before she was discharged. The administrative law judge concludes that based on the evidence presented, the claimant committed repeated instances of negligent conduct over the course of a month and was warned at her 30-day evaluation for the same conduct. The claimant's negligence caused substantial harm to the employer by creating delays in payments, complications with treatments, and compromising patient relationships, amongst other things. A single act of negligence alone would not constitute work-connected misconduct (*Greene*, 426 N.W.2d at 661), but when considered in light of past negligence, warnings, and the warning at her 30-day evaluation, her conduct of continued and excessive errors, without credible explanation, constituted work-connected misconduct under Iowa law.

DECISION:

The October 1, 2015 (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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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