

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CRAIG A ESTES**  
Claimant

**APPEAL NO. 14A-UI-08701-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CENTRAL IOWA HOSPITAL CORP**  
Employer

**OC: 07/20/14**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 12, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 9, 2014. Claimant participated personally and was represented by attorney Bruce Stoltze, Sr. Employer participated by Amanda Banks and Lucy Shippley.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on July 11, 2014. Employer discharged claimant on July 11, 2014 because claimant was seen going through the belongings of a sedated patient after being warned on multiple occasions that such conduct could be grounds for termination.

Claimant had received a final warning for going through items in a duffle bag of a patient who was out of his room in dialysis. Claimant was issued this final warning on May 12, 2014 after receiving a verbal warning in the summer of 2013 for going through a suitcase belonging to another patient. The final warning stated that, “patients, families, or staff will not state that claimant was observed going through personal belongings without permission.”

The last, most recent act of claimant that led to his termination was an alleged act where claimant was seen in a room where he was not the PCT for the patient. Claimant was in a room alone with a sedated patient when he was observed going through the patient’s belongings.

## 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).

Iowa Admin. Code r. 871-24.32(4), (8) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

(8) Past acts of misconduct. 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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning respect for patients' property. Claimant was warned concerning this policy. Claimant certainly knew of this policy and signed off on a Notice of Corrective Action which told of claimant's past indiscretions.

The last incident, which brought about the discharge, constitutes misconduct because claimant's story behind this incident strains credibility. Claimant has stated that he had a patient's daughter's permission to go through patient's belongings. Normally, a daughter would have gone through her mother's belongings on her own, not asked a stranger to do this. Certainly the daughter wouldn't leave the room, leaving the stranger sorting through the belongings with no one to watch him.

Nowhere did claimant attempt to defend his actions by telling his supervisor to check with other employees who he stated were in the room with him who would have heard the daughter's statements. It is highly irregular that claimant would have continued a search through an adult oncology patient's bag when looking for a cell phone with no one else in the room. These actions, given claimant's history, amount to misconduct. Employer has shown a willful desire to disobey policy on the part of claimant. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated August 12, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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