

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**TASHA N HARTWIG**  
Claimant

**APPEAL NO. 11A-UI-13993-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA ORTHOPAEDIC CENTER PC**  
Employer

**OC: 10/02/11**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 21, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 17, 2011. Claimant Tasha Hartwig participated. Renee Pile, Director of Human Resources, represented the employer and presented additional testimony through Marianne Mundy-Edsel and Katie Smith. Exhibits Two through Six were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Tasha Hartwig was employed by Iowa Orthopaedic Center, P.C., as a full-time medical back office assistant from January 2010 until October 6, 2011, when Renee Pile, Human Resources Director, discharged her from the employment.

The final incident that triggered the discharge was the employers' discovery on October 3, 2011 that Ms. Hartwig had placed more than 50 original x-rays in a box for items to be shredded. The original x-rays were on loan from other medical facilities and were to be returned to those facilities. Ms. Hartwig was assisting with processing the original x-rays for return during a period of low patient census. Ms. Hartwig normally performed other duties, but had performed the x-ray return processing duties before and had received sufficient training to perform the duties. Ms. Hartwig had documented in the employer's computer system that the original x-rays had been returned to the loaning facility. The employer's discovery was prompted by complaints from the facilities that the original x-rays had not been returned. The 50 or more original x-rays discovered in the shred box had been processed by Ms. Hartwig for return during the period of September 15 through October 3. While other staff might peruse the stacks of x-rays in Ms. Hartwig's work area as needed, Ms. Hartwig ultimately was responsible for making certain that the x-rays she processed were routed correctly and that original x-rays were returned to the loaning facility, rather than ending up in the shred box.

In making the decision to end Ms. Hartwig's employment, the employer considered prior incidents and reprimands. On May 26, 2011, Ms. Hartwig had improperly applied a cast to a patient's leg without enlisting proper assistance. On June 3, 2011, Ms. Hartwig had applied a knee brace to a child without measuring for proper fit.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on

which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

During the hearing, Ms. Hartwig was consistent in minimizing her responsibility for errors she made in the course of performing her duties. The large number of original x-rays the employer found in the shred box on October 3, 50 files, represented work Ms. Hartwig had performed over the course of an 18-day span. The number of files and time period involved indicates a pattern of careless and negligent handling of the original x-rays. Not only had Ms. Hartwig routed original x-rays for destruction, but she had also undermined the employer's relationship with multiple medical facilities, and the critical integrity of the employer's own records, by erroneously documenting that the original x-rays had been returned to the loaning facility. Ms. Hartwig worked in an environment that required meticulous attention to detail. Ms. Hartwig appears to have lost sight of the idea that her conduct impacted patient care. The weight of the evidence indicated that Ms. Hartwig had proper training and had the ability to competently perform the assigned duties. The weight of the evidence indicates that Ms. Hartwig had been both careless and negligent in connection with the two prior incidents the employer took into consideration. It all appears part of a pattern of cutting corners in an environment where a reasonable person would understand corner cutting was unacceptable. The pattern of conduct indicates a willful violation of the standards of conduct the employer reasonably expected of Ms. Hartwig.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Hartwig was discharged for misconduct. Accordingly, Ms. Hartwig is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Hartwig.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representative's October 21, 2011, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs