

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEROMEY D COPELAND
Claimant

GENESIS DEVELOPMENT
Employer

APPEAL 18A-UI-10250-LJ
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/16/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 5, 2018 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa, on November 5, 2018. The claimant, Jeromey D. Copeland, participated and was represented by Alison F. Kanne, Attorney at Law. The employer, Genesis Development, participated through Justin Terry, Director of Services; and Monica Bartlett, Human Resources Director. Claimant's Exhibits A through K and Employer's Exhibits 1 through 4 were received and admitted into the record without objection.

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: Claimant was employed full-time, most recently as a discovery aide, from May 11, 2012, until August 7, 2018, when he was discharged for recording conversations with the employer. Claimant explained that the conversations he recorded were solely related to his own employment, FMLA leave, and accommodations. He recorded the conversations as a means of documenting them for his own purposes. Claimant did not disclose to the employer that he was recording conversations. The employer does not know what conversations were recorded or what subject matter they covered.

On July 31, 2018, Terry had a conversation with claimant related to claimant's recording conversations. Terry asked claimant if he had recorded conversations and claimant replied, "So what you're saying is I need to start documenting my conversations in a different way?" Terry told claimant at that time that recording conversations with non-consenting individuals was a violation of the employer's rules and was not permitted. Claimant denies that he recorded any conversations with the employer after that date. The employer determined that claimant should be discharged as it found his conduct suspicious and was concerned that he had violated confidentiality rules and HIPAA by recording conversations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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) 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.

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

(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.

In reviewing past acts as influencing a current act of misconduct, the ALJ should look at the course of conduct in general, not whether each such past act would constitute disqualifying job misconduct in and of itself. *Attwood v. Iowa Dep't of Job Serv.*, No. __-__, (Iowa Ct. App. filed __, 1986).

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.

In this case, the employer discharged claimant for recording conversations with management. The employer admits that it does not know what claimant recorded or have any evidence that claimant violated HIPAA or confidentiality expectations. Claimant credibly testified that the only conversations he recorded were regarding his own employment situation. Additionally, claimant did not record any conversations after he was told that recording was not allowed. While claimant's conduct may have been inadvisable, it did not directly violate any known employment policy or workplace rule. The employer has not met its burden of proving that claimant was discharged from employment for disqualifying, job-related misconduct. Therefore, benefits are allowed.

DECISION:

The October 5, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn