

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LISA BASILI
Claimant

APPEAL NO. 14A-UI-02249-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONIFER REVENUE CYCLE SOLUTIONS
Employer

OC: 01/19/14
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Conifer Revenue Cycle Solutions (employer) appealed an unemployment insurance decision dated February 19, 2014, (reference 02), which held that Lisa Basili (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 2, 2014. The claimant participated in the hearing with Jurelle Robinson. The employer participated through Natasha Stephens, Human Resources Director and Vladimir Kupresanin, Patient Access Manager. Employer's Exhibits One and Two were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time Patient Access Representative 2 and was employed from January 1, 2013, through January 14, 2014, when she was discharged based on a final incident that occurred on December 21, 2013. One previous written warning was issued on June 14, 2013, for unprofessional behavior at the workplace. There was a documented conversation that took place on November 22, 2013, during which the claimant's supervisor addressed some additional situations regarding the claimant's attitude that she displays to co-workers, patients and families. This was not a formalized warning and it is noted that the claimant had made some progress and improvement since her written warning.

The claimant was discharged based on a complaint from an unknown patient who reported the claimant's comment, "I told them you are here but I didn't ask them in minute", was sarcastic and inappropriate. The patient wrote the complaint on December 21, 2013, and provided it to the Mercy Des Moines West Lake Campus, which is where the claimant worked. It is unknown when Mercy forwarded the complaint to the employer but the claimant was not discharged until close to a month after this date. She denies saying anything inappropriate to a patient and

explained that patients are frustrated when they have to wait to be treated. The employer did not provide the specific complaint and did not provide any first hand witnesses to the alleged incident.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on January 14, 2014, for policy violations with a final incident on December 21, 2013. She denies making any inappropriate comments to a patient on that date and the employer could only offer hearsay evidence as to the final incident. Hearsay testimony is admissible in hearings of this nature. Iowa Code § 17A.14(1) (2011).

Hearsay evidence is generally admissible in an administrative proceeding and under federal administrative law may constitute substantial evidence. *McConnell v Iowa Department of Job Service*, 327 N.W.2d 234 (Iowa 1982).

The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. Additionally, the discharge was for a past act. While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination or disciplinary suspension of employment must be based on a current act. See 871 IAC 24.32(8). The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated February 19, 2014, (reference 02), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs