

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JOSEPH A PFAB

Claimant,

and

MERCY MEDICAL CENTER

Employer.

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HEARING NUMBER: 11B-UI-05548

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Joseph Pfab (Claimant) worked for Mercy Medical Center (Employer) as a full-time security officer from November 10, 1993 until he was fired on March 23, 2011. (Tran at p. 2-3; p. 6; p. 20). Sometimes people are banned from the campus of the Employer and this information is, of course, shared with the security officer. (Tran at p. 4; p. 21). Under the Employer's policies this is to be kept confidential by security officers. (Tran at p. 3-4; p. 5; p. 21; Ex. 2). The Claimant had prior warnings, although none pertained to confidentiality breaches. (Tran at p. 7; Ex. 3; Ex. 4). He had not been warned that his job was in jeopardy over anything but interference with investigation. (Tran at p. 10). He was aware, however, that a confidentiality violation could get him fired. (Tran at p. 22).

On March 19, 2011 the Claimant saw his urologist. (Tran at p. 6; p. 8; p. 14). The doctor who had been banned had been the Claimant's cardiologist. (Tran at p. 14; p. 24). The urological nurse asked the Claimant when he would be seeing his cardiologist next. (Tran at p. 23; p. 24). The Claimant responded along the lines that he wasn't sure since the cardiologist wasn't there anymore. (Tran at p. 23; p. 24). The Claimant had expected that conversations held during his personal doctor's visit which were related to his medial treatment would be confidential. (Tran at p. 23; p. 25). He was at the time focused on his upcoming surgery. (Tran at p. 25). This nurse then reported this conversation to the HR department. (Tran at p. 6; p. 8; p. 16). The Employer then terminated the Claimant for the stated reason of breach of confidentiality. (Tran at p. 3; p. 11).

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2011) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We have found credible the Claimant's testimony that his only breach of confidentiality was the exchange with the nurse about why he had not contacted his cardiologist. (Tran at p. 21-22; p. 26). His questioning others if they had heard anything was not itself a breach of confidentiality. The exchange with the nurse occurred off-duty and while the Claimant was focused on his personal medical issues. He responded to a question in a natural way which, unfortunately, revealed more information than the Claimant should have. The Claimant revealed this extra information only collateral to imparting health related information to his nurse. True, the Claimant should not have done this. But we conclude that this statement was made in good faith even though it was wrong. "[G]ood faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute." 871 IAC 24.32(1)(a). The Employer has proven no more than a good faith error of judgment, and benefits are allowed.

DECISION:

The administrative law judge's decision dated June 3, 2011 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason. Accordingly, the Claimant is allowed benefits provided the Claimant is otherwise eligible.

John A. Peno

Elizabeth L. Seiser

DISSENTING OPINION OF MONIQUE KUESTER:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Monique F. Kuester