

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY L WRIGHT
Claimant

APPEAL NO. 10A-UI-09158-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLINIC INVESTMENTS INC
Employer

**Original Claim: 05/23/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Stacey Wright filed a timely appeal from a representative's decision dated June 25, 2010, reference 02, which denied benefits based upon her separation from Clinic Investments, Inc. After due notice was issued, a telephone hearing was held on August 12, 2010. The claimant participated personally. Although duly notified, the employer indicated that they would not participate. Claimant's Exhibits One and Two were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Stacey Wright was employed by Clinic Investments, Inc., doing business as Wolfe Eye Clinic, from August 2004 until May 26, 2010, when she was discharged from employment. Ms. Wright was employed on a full-time basis and worked as a medical transcriptionist. Her immediate supervisor was Dennette Pease.

The claimant was discharged on May 26, 2010, approximately three days after reporting what she considered to be a HIPAA violation to company management. At the time Ms. Wright reported the suspected HIPAA violation, management promised to meet with staff to discuss the matter. When called to a meeting that Ms. Wright believed was to discuss HIPAA rules, the claimant was instead discharged. The employer alleged the claimant had falsified time records by being at another locale while on the clock.

Through common practice and at the authorization and direction of the claimant's immediate supervisor, Ms. Pease, employees regularly traveled to a Starbucks location at the beginning of the day or during morning hours to retrieve Starbucks coffee for the office staff. Employees were not required to clock out for this purpose, as it was work-related and directed by management. Employees who were instructed to pick up coffee en route to work would be clocked in by another worker with the authorization of Ms. Pease.

At the time of discharge, the claimant reminded the employer of the practice and its specific authorization by management, but the claimant was nonetheless discharged. Ms. Wright also asserts that a second employee who also reported a HIPAA violation was also discharged that day.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Wright was discharged for misconduct in connection with the employment. It does not.

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 the 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 App. 1992).

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 Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

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.

In this matter, the evidence in the record establishes that the claimant had not only been authorized but directed by company management to leave the work premises to retrieve coffee for the staff on numerous occasions and that the claimant was not required to clock out for these duties that had been employer-directed. The evidence also establishes that the claimant had routinely been instructed to stop to obtain coffee en route to work and that a second employee had been authorized to clock the claimant in as Ms. Wright was performing duties for the company that prevented her from personally clocking in at the beginning of her shift. The evidence establishes that not only was company management aware of these practices, but that the claimant had also been directed by her immediate supervisor to follow these practices. Prior to being discharged, the claimant had not been warned or counseled that the practice was unacceptable, and the discharge took place approximately three days after she reported a suspected HIPAA violation to management. It is the claimant's belief that she was discharged from employment for reporting the suspected HIPAA violation and not because she had followed the authorized practice of obtaining coffee for the staff en route to work.

There being no evidence to the contrary, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated June 25, 2010, reference 02, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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