

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RON A WALKER

Claimant

THE UNIVERSITY OF IOWA

Employer

APPEAL NO. 14A-UI-11982-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/26/14

Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 12, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 10, 2014. Claimant participated personally. Employer participated by Mary Eggenburg, Phyllis Jacobsen, and Jeff Vossenkemper. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 24, 2014. Employer discharged claimant on October 24, 2014 because claimant violated employer's policy on patient confidentiality.

Claimant's background indicated an excellent employment record. Claimant had positive performance reviews. Claimant was timely for work and had received no previous warnings.

Claimant's ex-girlfriend had a friend that was a supposed patient at the U of I hospitals. This person wanted a benefit to be held in his honor to help offset medical bills. The ex-girlfriend believed this to be a lie. Claimant accessed patient information outside of his normal job regarding this individual in order to find out whether this person was actually having cancer treatment. When claimant found out this person was not having treatments, he shared that information with his ex-girlfriend.

Employer was informed by a patient of possible violations of patient confidentiality. Employer then investigated this claim and came to believe that claimant had accessed information not directly related to his job and then shared this information with others. When employer confronted claimant with this information, claimant's first response was to blame his ex-girlfriend. Claimant stated she'd accessed the information while claimant was in the other room at his residence. Claimant then gave other stories before admitting that he'd accessed the information on his own while he was at work.

Employer has all employees go through training before beginning employment. This training includes information on HIPPA and the importance of client confidentiality.

REASONING AND CONCLUSIONS OF LAW:

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(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.

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning patient confidentiality. Claimant was trained concerning this policy and received daily warnings on the policy when he would turn on his computer.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew he was not to access medical information on patients for private use. Employer has potential liability problems through HIPPA violations concerning the unauthorized dissemination of patient information. Whether the claimant disseminated this information to one person or more, the severity of the violation and claimant's initial dishonesty when confronted with the violation; warrant termination. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated November 12, 2014, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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