

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DINO P COSTANZO**  
Claimant

**CHI NATIONAL HOME CARE**  
Employer

**APPEAL NO. 18A-UI-10839-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/14/18**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 30, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 19, 2018. Claimant participated personally. Employer participated by Amy Muhlenbruck. Employer's Exhibits 1-6 and Claimant's Exhibits A-K and M were 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 11, 2018. Employer discharged claimant on October 12, 2018 because of an ongoing lack of professionalism after warnings.

Claimant worked as a client relations executive for employer. Toward that end, claimant would visit facilities where employer conducted business and encourage more interactions between the companies. Claimant worked for employer for approximately a year and a half. Shortly after hire, claimant went through educational training to inform him of HIPAA requirements and procedures to be followed in the facilities he'd be visiting.

On numerous occasions claimant's visits to facilities for employer brought about counselings as claimant would be pushy and interrupt others' official business with governmental entities and with concerned families. Claimant received counseling's on April 19, September 7, and September 27, 2018 before claimant received a Performance Improvement Plan on October 3, 2018. All of these counselings and the improvement plan alert claimant to acting in a more professional manner, and acquainting himself more with procedures and HIPAA regulations to be followed in his business dealings.

Shortly after claimant received the performance improvement plan, employer was informed of another, earlier event when claimant was allegedly involved with unprofessional actions toward a different client retirement community. Employer explained to claimant on October 11 that they would be investigating this incident and suspended claimant during this investigation. Employer stated that claimant was told not to be in contact with the retirement community. (Claimant stated that he was never told not to be in contact with the retirement home). Within minutes of the meeting with employer, claimant called up the director of the retirement home and began questioning her regarding the allegations.

Hearing that claimant had immediately called up the retirement home after being told not to do so, employer moved forward to terminate claimant's employment on October 12, 2018.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id. In judging the credibility in this matter, the administrative law judge notes when documents were created by the various parties, and also the facts and circumstances surrounding requests by the employer and the responsive acts, or lack thereof, by the claimant. With particularity, the administrative law judge notes that claimant was advised to study up on a number of practices and procedures to be followed in order to be HIPAA compliant. Weeks later, claimant had not done any of the readings. Applying claimant's lack of conformity with employer's request to the last most recent act that led to claimant's termination – that of bothering a nursing home director immediately after being told not to do so – it is the finding of the administrative law judge that employer's version of the events in this matter was more credible.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning Professional Boundaries and employer's People First commitments. Claimant was warned on multiple occasions concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant was repeatedly warned to have professional boundaries in general and warned at a meeting not to be in contact with the nursing home director whose statements they were investigating. When claimant took it upon himself to immediately violate this directive and reach out to the director, he showed a lack of professionalism and respect to his superiors. 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 October 30, 2018, 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.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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