IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KATHRYN TRUMP
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL NO: 15A-UI-01908-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/18/15
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 3, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 24 and continued on April 21, 2015. The claimant participated in the hearing. Mary Eggenburg, Benefits Specialist and Constance Wagner, Nurse Manager of Student Health and Wellness, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time medical assistant II for the University of Iowa from September 10, 2001 to January 12, 2015. She was discharged for committing a HIPAA violation.

On December 31, 2014, the claimant was assigned to work in the lab. She conducted a lab test on a female patient. The test was a pregnancy test and after receiving the positive test results the claimant told a clerk she "hoped they would be happy" because a student the previous day received a positive pregnancy test and was upset about it. The claimant also informed the clerk there was a well-known athlete standing at reception and mentioned that student's name as well. After receiving that information the clerk went upstairs to where the patient was being treated and began asking two medical assistants working that floor about the patient and if the well-known person was the patient's boyfriend. The clerk told the two medical assistants the claimant had given her the patient's test results and asked if the couple were happy.

After their encounter with the clerk, the two medical assistants approached Nurse Manager of Student Health and Wellness Constance Wagner and asked if the claimant and clerk's actions were a HIPAA violation. After hearing about the incident Ms. Wagner notified the claimant and

the clerk there would be an investigation the following Monday, January 5, 2015. The investigation actually took place January 6, 2015. Earlier in the day on January 6, 2015, Ms. Wagner and Clerk Supervisor Lisa James, spoke to Compliance Officer Debbie Thoman to ask about potential HIPAA violations as the result of the claimant and the clerk's actions.

During the afternoon of January 6, 2015, an investigatory meeting was held. When Ms. Wagner informed the claimant prior to the meeting that it may result in disciplinary action, the claimant asked if she needed union representation. Ms. Wagner told her she could not answer that question for her. The meeting was conducted with the claimant, Student Health Human Resources Director Katie Coleman, Ms. James and Ms. Wagner in attendance. During the meeting the employer notified the claimant the HIPAA violation could result in disciplinary action including termination of employment and the claimant declined union representation.

During the meeting the claimant admitted she told the clerk the test results and that she hoped the couple was happy. The employer asked the claimant if it was normal procedure to disclose test results to someone outside of those that have a medical need to know and the claimant stated it was not but sometimes she says things out loud to herself. The employer asked the claimant how often she had been in that patient's chart that day and the claimant responded she had only been in the patient's chart once. The employer asked the claimant if she had received annual HIPAA training and the claimant agreed she had. The employer then asked the claimant how she knew the well-known person involved in the situation and the claimant responded that the well-known person had the same color of hair as her nephew and her family thought he was going to grow up to look like the well-known person.

After the meeting the claimant went to where the two medical assistants were located and they asked her what was going on and the claimant told them all of the events in question before asking them, "Don't you remember when I told you about (the well-known person) standing at the reception desk" and they indicated they did not recall that. After that conversation, one of the medical assistants told Ms. Wagner about the conversation and Ms. Wagner immediately called the claimant to her office and told her everything said during the investigatory meeting had to stay within the walls of the meeting room or it would be another HIPAA violation.

Following the meeting where the claimant stated she only accessed the patient's chart once December 31, 2014, the employer asked Ms. Thoman to further investigate that issue. On January 7, 2015, Ms. Thoman completed her investigation and reported the claimant entered that patient's chart seven times December 31, 2014. She should only have been in the patient's chart on one occasion that day to enter the results of the lab test she conducted.

The employer met with the claimant January 8, 2015, and told her the results of the investigation and placed her on administrative leave. On January 12, 2015, Ms. Wagner and Ms. Coleman met with the claimant and reviewed the findings of the employer's investigation. The employer asked the claimant if she had any other information to add and she indicated she did not. Ms. Wagner and Ms. Coleman then left the room and used the computer program with an algorithm that is utilized for all HIPAA violations. The program absorbs all of the information entered and determines what level of disciplinary action is merited. In this case, the program found the claimant inappropriately accessed patient records she did not need to perform her job, which the employer has a zero tolerance for and is considered one of the worst HIPAA violations, and the result was termination of the claimant's employment January 12, 2015.

The claimant underwent annual HIPAA training provided by the employer. In one of the HIPAA training power point presentations it specifically discussed a situation where an athlete was involved and the employee in the training video informed others who lacked any medical reason

to know of the situation that involved the athlete. Additionally, both the claimant and the clerk were present approximately four years ago when a similar violation occurred and Ms. Thoman conducted further training following that incident.

The claimant claimed and received unemployment insurance benefits in the amount of $4670 for the 12 weeks ending April 18, 2015.

The employer personally participated in the fact-finding interview through the statements of Benefits Specialist Mary Eggenburg.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged her for reasons constituting work-connected

misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts of omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

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 section 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 section 96.5-2-a.

The claimant disclosed confidential medical information when she told the clerk the results of the patient's lab test confirming she was pregnant and then again when she identified the well-known person to the clerk, resulting in the clerk going to the floor the patient was on and asking the medical assistants if he was the patient's boyfriend. The claimant also accessed the patient's chart on a number of occasions December 31, 2014. The claimant told the employer she only accessed the chart once that day, as would be expected when she entered the test results, but when confronted with the employer's data regarding how many times she entered the patient's chart December 31, 2014, the claimant stated she was in the chart three times, two of which were by accident.

The claimant's testimony, including that she says things that would violate HIPAA out loud to herself, that she only commented on the well-known person because he had the same color of hair as her nephew, and that she "accidentally" entered the patient's chart twice December 31, 2014, was not persuasive.

The claimant was an experienced employee, having worked for the employer for over 14 years and went through HIPAA training at least that many times. During one of the more recent HIPAA power point presentations, a situation very similar to the one that ultimately resulted in the claimant's termination, involving a well-known athlete, was presented during training and employees were instructed in how to avoid HIPAA violations in those situations. Medical professionals have a legal as well as an ethical responsibility to protect every patient's privacy whether they are well-known people in the community or not. They have a heightened duty, however, to protect the privacy of well-known people who seek any type of treatment from the medical facility because other employees and the public have a greater interest and curiosity in information regarding well-known people.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

871 IAC 24.10 provides:

> Employer and employer representative participation in fact-finding interviews.
>
> (1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if

unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the

employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer participated in the fact-finding interview personally through the statements of Benefits Specialist Mary Eggenburg. Consequently, the claimant's overpayment of benefits cannot be waived and she is overpaid benefits in the amount of $4670.

DECISION:

The February 3, 2015, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The employer did personally participate in the fact-finding interview within the meaning of the law. Therefore, the claimant is overpaid benefits in the amount of $4670

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Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

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