IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

CAROL L TWEDT
Claimant

CONIFER REVENUE CYCLE SOLUTIONS
Employer

APPEAL NO: 18A-UI-07022-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/03/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 22, 2018, 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 July 18, 2018. The claimant participated in the hearing. Virginia Drake, Human Resources Director and Joy Wiles, Supervisor, 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 patient financial representative for Conifer Revenue Cycle Solutions from November 23, 2015 to June 5, 2018. She was discharged for alleged violations of a patient's personal health information, HIPPA, and a pattern of not following procedure.

On May 3, 2018, the claimant was assigned to work the switchboard. She received a call from a distraught person who wanted to harm herself. The claimant was not trained how to handle those situations and transferred the patient to the emergency room receptionist. That was her first emergency call and she was concerned about whether she handled the situation correctly so she asked the employee health nurse, Deb Mills, if she acted properly. She did not tell Ms. Mills the name of the caller or provide her with any other information. Ms. Mills took it upon herself to go to the emergency room and get the patient's name from the receptionist. She then looked on Facebook and found the patient's employer and called it to say the patient, who was at work, was considering harming herself. The claimant did look up the patient's name to see if the caller was a patient of the hospital. The claimant self-reported her action of looking up the patient's name on hospital records to the compliance officer May 4, 2018. The compliance officer praised the claimant for self-reporting and said the claimant was not in any trouble but cannot access patient account information unless working on that account. The compliance officer said the claimant would be fine but could not speak with regard to Ms. Mills' actions. The employer did conduct an investigation and the claimant asked her supervisor, Joy Wiles, about

the investigation but was told she could not talk about an on-going investigation. Ms. Wiles told the claimant the employer might provide some education to her and may have to set up a system of sending emergency calls to 911.

On May 31, 2018, the claimant copied and pasted an email to her from Ms. Wiles about a patient's procedure into the patient account information. Her actions made the email part of the business and legal record of the patient and the emails cannot be removed from the file. The claimant had copied and pasted emails into patient accounts since she started working for the employer and was never told not to do so. The health information manager had asked her if she was typing emails into the system or copying and pasting them and the claimant said copying and pasting and the health information manager said, "Okay. You're good." The claimant did not know what she was doing was wrong or that her actions with the emails placed her job in jeopardy.

The employer terminated the claimant's employment June 5, 2018, for the two incidents discussed above.

The claimant received a final written warning May 7, 2018, for failing to follow procedure. On March 7, 2018, the claimant was instructed to leave her office key with the emergency room department desk and check it out each day. On April 25, 2018, the hospital safety coordinator told the employer the claimant had not been leaving her key with the desk and the claimant started doing so after that date. On April 18, 2018, the claimant had a patient in her office with a question about a bill. The charge in question concerned a new medication being used by a Wolfe Clinic doctor and the way the hospital was billing caused the charge to show up as not payable by insurance. The claimant suggested the patient contact her doctor or go to medical records rather than researching the question herself and getting back to the patient. The claimant was trained April 12, 2018, on handling patient complaints. On April 18, 2018, the claimant emailed a patient refund request to Ms. Wiles without including the account information on the refund request forms. The employer had sent the claimant emails with instructions August 4, November 2 and December 11, 2017. On May 2, 2018, the clinical services director received a call transferred from the claimant and the caller complained the claimant was unprofessional and rude. The claimant asserts the clinical services director does not like to take cold calls and she was merely trying to ascertain with whom the caller needed to speak.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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:
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> 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.
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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). 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 N.W.2d 661, 665 (Iowa 2000).

The claimant was very concerned about the patient who called May 3, 2018, saying she was thinking of harming herself and because she had not been trained on emergency calls and this was her first one, she wanted to confirm she handled it correctly. She asked Ms. Mills if she reacted appropriately and Ms. Mills told her she did. The claimant did not disclose any information to Ms. Mills about the patient beyond the fact she received a call from a woman who said she wanted to harm herself. Ms. Mills pursued further information and her actions placed the employer in legal jeopardy. While the claimant should not have looked up the woman on the employer's system to see if she was a patient, she did self-report what she did to the compliance officer. The employer did not take any disciplinary action against the claimant for over one month which takes that situation out of the realm of being a current act of misconduct.

The claimant did copy and paste an email from Ms. Wiles into a patient file but did not know she was doing anything improper. She had been copying and pasting information from emails into files since she began her employment and was never told she should not be doing so. She did not know her actions placed her job in jeopardy. Had the employer warned the claimant about her behavior and had it persisted, it would have an argument for misconduct based on the May 31, 2018, incident. As it stands, because the claimant was not warned, did not know her actions were not sanctioned by the employer and did not know she was placing her job in jeopardy, that situation does not constitute disqualifying job misconduct.

The two incidents cited by the employer as the reasons for the claimant's termination do not rise to the level of disqualifying job misconduct, as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The June 22, 2018, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/scn