

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SUZANNE L KIRKPATRICK**  
Claimant

**FINLEY HOSPITAL**  
Employer

**APPEAL 19A-UI-03418-H2T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/24/19**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 13, 2019, (reference 02) decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 14, 2019. Claimant participated. Employer participated through Cindy Weidemann, Director of Compliance/Risk/Regulatory; Laura Stoney, Clinic Manager; Geri Schilling-Johnson, Interim Executive Director; and Zoe Coyss, Human Resources Business Partner.

**ISSUE:**

Was the claimant discharged due to job connected misconduct sufficient to disqualify her from unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a patient service representative beginning on June 30, 2008 through March 29, 2019, when she was discharged. The claimant was discharged for repeated violations of the employer's protected health policy. As a hospital, the employer is required to comply with the Health Insurance Portability and Accountability Act. In addition to instituting policies to insure employees comply with the policy, the employer also has their own internal rules and policies to insure that patients medical information is protected. While employees may have access to the information contained in the records, access alone does not give them permission to view the records. Employees must have a business purpose to view a protected medical record.

The claimant was initially placed on a performance improvement plan in the fall of 2018. She was given two individual coaching sessions for trying to accomplish tasks that were not part of her job duties. As the first point of contact with patients coming to the clinic, the claimant was responsible for collecting any co-payment the patient would be required to pay at the time of the visit. Claimant's role in billing and payment was limited to collecting the copayment and asking for any back payment at the time of the visit. The claimant was trying to perform additional billing functions beyond that with the idea that she was providing good customer service to

patients. Claimant was coached to let the billing department handle billing questions and to limit her inquires and activities to her assigned tasks.

On December 28 the claimant was trying to help a patient with a question the patient had asked her. The claimant went so far as to contact the patient's insurance company to find out why they were refusing to pay for a medication prescribed by one of the providers. Claimant was not acting to assist her employer when she called the insurance company, but was trying to assist the patient. Eventually, the patient complained about the claimant to her direct supervisor, Ms. Stoney, who investigated. Ms. Stoney had an audit run that showed which parts of the patient's charts the claimant had accessed and when. The claimant had been in the patient's chief complaint, medication, and diagnosis among others. Claimant had no business reason to access those sections of the patients chart. Claimant was suspended for one day on January 14, 2019. At the same time she was given retraining on HIPAA and the employer's polices. Claimant was also told that any further infractions would lead to her discharge. She was also told that the employer would conduct periodic reviews or audits.

Another patient complaint to Ms. Stoney on February 28 caused her to request additional audits be done of the claimant's access to patient records. Eventually an individual audit of one patient was conducted, as well as a general audit of all of claimant's access during a particular time period. The audit of a particular patient for February 28 and the general audit on March 7 both showed claimant accessing multiple patient records she did not have any business reason to access. On March 7 the claimant accessed parts of seventeen patient charts were she had no business reason to be in that part of the chart. As a result of the claimant's continued failure to follow the employer's policy regarding accessing patient medical records, the claimant was discharged on March 29, 2019.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is reasonable for this employer to limit employees access to patients medical records. An employer should not have to actually lock an employee out of a computer in order to require they comply with access rules. The claimant had been warned more than once that she was not to access patient medical information that was not required for her job. She was also warned that she was not to go beyond the parameters of her assigned job duties. The claimant may have wanted to offer additional help to patients, but that alone did not give her the right to violate the employer's access rules. Claimant's motives may have been admirable, but her actions were a direct violation of the conduct the employer has a right to expect from its employees.

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 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. *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. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge concludes the employer offered the more credible testimony. The claimant had been put on notice about limiting her actions to her own well defined job duties. The employer's records, which a reasonable person can rely upon, showed the claimant accessing seventeen different patient records in a one day period. Claimant's argument that she just clicked on a wrong tab is not believable. Claimant was accessing records she had been warned not to access. Claimant's repeated failure to follow the access rules after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

**DECISION:**

The April 13, 2019; (reference 02) unemployment insurance decision is affirmed. 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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