

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER M NEUMANN
Claimant

IOWA PHYSICIANS CLINIC MEDICAL
Employer

APPEAL NO. 14A-UI-07313-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/15/14
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 July 7, 2014, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 7, 2014. Claimant participated personally. Employer participated by BJ Gibbs.

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 May 15, 2014. Employer discharged claimant on May 22, 2014 because claimant accessed files that she had no professional reason to access.

Claimant worked as a clinical nurse for employer. Claimant had a personal relationship with a client of employer. Claimant had no professional relationship with this client. Claimant accessed the medical files of this patient, in knowing violation of HIPAA standards. Claimant had received HIPAA information upon hire, and had taken yearly updated courses on HIPAA training.

Claimant admitted to accessing these records of a boyfriend, but stated that it was common practice for employees to access files of people that they were no longer caring for. Claimant's boyfriend had contacted the office to complain of claimant accessing his medical records, and an investigation was done whereby an audit showed that claimant did access the records. Claimant admitted to this.

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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in

disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 HIPAA violations. Claimant was warned concerning this policy, and had yearly updates to her HIPAA education.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew of the importance of not violating HIPAA regulations, had been consistently reminded of this, and willfully put her personal interests ahead of the interests of the employer. 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 July 7, 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

bab/pjs