

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY L BREITSPRECKER

Claimant

FINLEY HOSPITAL

Employer

APPEAL 19A-UI-07401-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/25/19

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant, Amy L. Breitsprecker, filed an appeal from the September 16, 2019, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 10, 2019. The claimant participated personally. The employer participated through Zoe Coyss, human resources business partner. Greg Brosius also attended. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a certified pharmacy technician and was separated from employment on August 26, 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. When she was hired the claimant was given and signed off on the employer's confidentiality policy. Claimant had also been informed that she was required to comply with HIPAA which requires medical providers to protect a patient's privacy. Employees must have a business purpose to access a patient's room or personal information.

The claimant was issued a final written warning on February 27, 2018 for sharing information with two other employees without a justifiable business reason to share the information. The final incident occurred on August 14, 2019 when the claimant visited a patient's room to give the child a stuffed rabbit and also gave chocolate milk to the patient's sibling. According to the claimant, she was told to bring the patient the stuffed animal and upon entering the doorway, was told by the patient's mother to give the stuffed animal to her directly. The claimant also reportedly commented on the x-ray being done for the child and offered chocolate milk to the

sibling. The patient's grandmother was in the room, and an employee of the hospital and reported the incident to the employer.

The claimant stated she was given permission by a nurse to administer the stuffed animal but could not remember who gave her permission. The employer stated when it visited with the nurse assigned to the patient, she had not given permission and stated the child would not have been granted permission for a stuffed animal based upon criteria used in administration of them. The claimant was subsequently discharged for having a second HIPAA violation.

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).

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). In this case, the claimant had been previously counseled for violating the employer's confidentiality and HIPAA policies. The claimant knew or should have known her job was in jeopardy based upon the first warning. The claimant may have wanted to offer additional help or comfort by way of a stuffed animal and chocolate milk to this patient and the patient's sibling, but that alone did not give her the right to violate the employer's access rules. Claimant's motives may have been with good intentions but her actions were a direct violation of the conduct the employer has a right to expect from its employees. The administrative law judge is persuaded the claimant knew or should have known her conduct was contrary to the best interests of the employer. The employer has established the claimant's discharge was due to job-related misconduct. Benefits are denied.

DECISION:

The September 16, 2019; (reference 01) 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.

Jennifer L. Beckman
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Decision Dated and Mailed

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