

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JADE M JOHNSON**  
Claimant

**APPEAL NO. 16A-UI-11855-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HILLCREST FAMILY SERVICES**  
Employer

**OC: 10/02/16  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Hillcrest Family Services, the employer, filed a timely appeal from a representative's decision dated October 20, 2016, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on Wednesday, November 16, 2016. Claimant participated. The employer participated by Ms. Shannon Hagensten, Director of Human Resources, and Ms. Renee Krause, Program Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Jade M. Johnson was employed by Hillcrest Family Services from August 21, 2014 until October 4, 2016 when she was discharged from employment. Ms. Johnson was employed as a full-time integrated health/home assistant and was paid by salary. Her immediate supervisor was Renee Krause.

The claimant was discharged on October 4, 2016 for an incident that had taken place on September 27, 2016. At that time Ms. Johnson was being trained for a new job position by an employee with more experience. The claimant faxed an appeal with the accompanying documentation to the Department of Inspections and Appeals on behalf of a resident. Ms. Johnson was instructed on the way to provide the information and complied with the instructions of her trainer before doing so. Later, it was determined that although the claimant had included proper releases for HIPAA information with the documentation, the documentation had not been sent for "treatment" purposes and, therefore, was considered to be a HIPAA violation.

Because HIPAA violations are considered to be a serious offense, the claimant was discharged from employment. Ms. Johnson had not previously been warned or counseled about any similar conduct.

It is the employer's position that the claimant should have been knowledgeable enough to recognize the need for further review by her supervisor before sending the information on behalf of the resident to the Department of Inspections and Appeals.

### **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 § 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).

The employer has the burden of proof in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination

of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be “substantial.” When based upon carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

The evidence in the record establishes that claimant’s conduct in forwarding the appeal with supporting documentation was an isolated instance of poor judgment based upon inexperience and the wrong information given to the claimant by her trainer. The employer had not previously warned the claimant about any issues of this nature and the claimant was reasonable in relying on the assurances made to her by her trainer that the documents being faxed were proper and necessary. The employer, therefore, has not met its burden of proof to establish the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure or prior warnings. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, intentional misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Accordingly, the claimant is held eligible to receive unemployment insurance benefits, provided that she meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative’s decision dated October 20, 2016, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs