

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDA L SEVERSON
Claimant

MERCY HEALTH SERVICES-IOWA CORP
Employer

APPEAL 18A-UI-08783-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/29/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 16, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for engaging in conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephonic hearing was held on September 7, 2018. The claimant, Linda Severson, participated along with witness Clay Shirk. The employer, Mercy Health Services – Iowa Corporation, participated through Heidi Willrett, Employee Relations Coordinator. Claimant’s Exhibit A was received and admitted into the record without objection.

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: Claimant was employed full-time, most recently as a clinic coding specialist, from July 1, 2000, until July 16, 2018, when she was discharged for violating HIPAA. On June 29, 2018, the employer received a telephone call from claimant’s sister complaining that claimant had been accessing her sister’s medical records. According to claimant’s sister, claimant knew information about her that she should not know. After this call, the administrator on call consulted with employees in the Health Information Management area and corporate and decided to run a report to identify claimant’s access of her sister’s health information. On July 3, the employer received the report back. The report showed that claimant had accessed her sister’s chart and health information on February 1, March 9, March 27, June 4, and June 7.

After receiving the report, Director Kristy and Manager Becky met with claimant to ask her why she had accessed these health records. Claimant explained that she accessed the records to ensure that documentation was done from her sister’s physician visits before she passed on the file to the lead for coding. The employer explained that after a patient’s visit concludes and a physician puts final charges in the patient’s health record, the chart can be coded. As a coder, claimant ran a report each day to generate a list of all the charts that would be coded. Claimant alleges that sometimes this report was inaccurate so she would have to check each patient

record to ensure it was actually complete. Claimant did not explain why she would have to do this for her sister's record before passing it on for coding. Claimant received training on HIPAA and she knew she was not permitted to access a family member's health information. Claimant was told by Sandy that she could not code for a relative.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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). 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).

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 finds the employer's testimony more credible than claimant's testimony. Specifically, the administrative law judge was not convinced by claimant's explanation for accessing her sister's chart.

In this case, claimant was discharged for an intentional HIPAA violation. The employer has established through testimony that claimant was trained on HIPAA and was aware that violating HIPAA intentionally could lead to her discharge. Claimant had no legitimate business reason for accessing her sister's chart on five occasions in 2018. There is no reason the person who ultimately coded the sister's visit could not look at the chart and see if all the necessary information was there. Claimant intentionally violated HIPAA by accessing her sister's health information for no business reason; this is disqualifying even without prior warning. The employer has established that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The August 16, 2018, (reference 01) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn