

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CONNIE M HOPWOOD**  
Claimant

**APPEAL NO. 17A-UI-07679-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVER HILLS COMMUNITY HEALTH CTR**  
Employer

**OC: 07/02/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Connie Hopwood filed a timely appeal from the July 20, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Hopwood was discharged on July 5, 2017 for violation of a known company rule. After due notice was issued, a hearing was held on August 16, 2017. Ms. Hopwood participated. Steve Haigh represented the employer and presented additional testimony through Kari Rupe and Michelle Bowers. Exhibits 1 through 6 were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Connie Hopwood was employed by River Hills Community Health Center (RHCHC) in Ottumwa as a full-time Registered Nurse/Health Educator from 2014 until July 5, 2017, when Steven Haigh, Human Resources Director, and Kari Rupe, Compliance Officer, discharged her from the employment.

The sole incident that factored in the discharge occurred on June 15, 2017 and came to the employer's attention on June 22, 2017, when the husband of a patient called RHCHC to complain about Ms. Hopwood's conduct at the time of the patient's June 15 appointment. On June 15, 2017, the patient visited the medical clinic for a pregnancy test. The patient had been attempting to become pregnant for about a year. The patient thought she had a scheduled June 15, 2017 appointment with Pat Tucker, a nurse practitioner at the medical clinic, but no such appointment appeared in the clinic's scheduling records. When the patient and her husband arrived at the medical clinic on June 15, 2017, they initially spoke with a receptionist at the reception desk regarding whether there was indeed an appointment scheduled for the patient with Ms. Tucker that day. The receptionist contacted Ms. Hopwood, who reviewed the patient's records. Ms. Hopwood was able to determine that the only thing scheduled for the

patient that day was a nurse-only appointment so that the nurse could collect a urine specimen from the patient and perform a pregnancy test with the specimen. The patient and her husband were upset that no appointment was scheduled with the nurse practitioner. The patient's husband was also upset about the cost of a prescription cream that Ms. Tucker had prescribed for the patient. The patient's husband was also upset about the particular pharmacy from which the cream was available.

At the time the patient appeared at the clinic, there was not an available patient examination room. The clinic has 24 exam rooms in total, but only two that are designated for use by the family planning and women's health providers. The procedure room that the ob-gyn staff shares with family medicine and pediatrics staff was also in use. In the absence of a patient examination room, Ms. Hopwood had the patient's husband wait in the clinic's lobby while she escorted the patient to the restroom so that patient could provide a urine specimen for testing. Ms. Hopwood took steps to collect a urine specimen from the patient and then had the patient return to the waiting room. Once the urine specimen was collected, it took about three minutes for Ms. Hopwood to complete the pregnancy test. The test was negative. Though the procedure room was now open, Ms. Hopwood elected to convey the test result to the patient and her husband in the lobby of the medical clinic. At the time Ms. Hopwood conveyed the test result to the patient and the patient's husband, there was no one besides Ms. Hopwood, the patient, the patient's husband and the receptionist in the clinic lobby. The receptionist was several feet away from where Ms. Hopwood spoke to the patient. The receptionist could hear Ms. Hopwood speaking to the patient and the patient's husband, but could not discern what Ms. Hopwood was saying to the patient. Ms. Hopwood told that patient that, "it was a negative result." Ms. Hopwood did not mention the work pregnancy. At that point, the patient and her husband pressed for an appointment with Nurse Practitioner Tucker. Ms. Hopwood explained that Ms. Tucker's scheduled was full that day and offered to refer the patient to the ob-gyn physician. The couple did not want to meet with the physician because the physician was male. It was at that point that the husband began to complain about the prescribed cream, the cost of the cream, and his dislike of the pharmacy from which the patient needed to obtain the cream. During this point in the discussion, one or more patients entered the clinic lobby. Ms. Hopwood escorted the patient and her husband to the elevator. Ms. Hopwood then returned to her other duties.

On June 22, 2017, the patient's husband phoned RHCHC and spoke with Michelle Bowers, Compliance Officer. Ms. Bowers took notes during the call and documented the caller's complaint as follows:

I am calling to file a complaint for my wife as she is depressed and didn't know what to say but knows there is a privacy law that has been broken. She called to set up and appointment with Family Planning/Title X last week. She was told to come in on the 15th of June. The appointment was not put on the calendar. When she checked in she was called back to take the pregnancy test. After the test they told her to sit in the waiting room. The nurse, Connie came out to the lobby and said out loud for everyone to hear that the test is negative, she is not pregnant. My wife has been very upset ever since this happened because we have been trying for a year. This has depressed her more because everyone in the waiting room now knows she is not pregnant. She was referred to Dr. Coleman. I don't want to get anyone in trouble but my wife is upset and I know there are privacy laws out there and this is a HIPAA violation. You are not to talk to patients in the lobby, the nurse should know that because she wouldn't have gotten her license if she didn't. I am calling you so you will address this issue with the staff over there.

The patient and her husband were in fact upset by a number of things. These included the absence of a scheduled appointment, the unavailability of the nurse practitioner, the negative pregnancy test result, the cost and source of the prescribed cream, and what the patient perceived and a public pronouncement of the negative test result to anyone who might be present in the clinic lobby.

At the time Ms. Hopwood began her employment, she signed her acknowledgement of the RHCHC Confidentiality Statement. The Confidentiality Statement included the following:

All employees of RHCHC are aware of the need to keep all patient information confidential. All new employees are required to sign this statement agreeing that if they breach confidentiality they will be subject to disciplinary action up to and including termination.

Employees must avoid talking about any patient sensitive information in areas where their conversation could be overheard by other staff members and/or patients.

The Confidentiality Statement was based on the RHCHC Policy on Confidentiality. That policy included the following:

RHCHC will insure the patient's right to privacy and confidentiality among all locations, treatment areas, and departments. Both during and after all treatments, services, functions, and activities within its health care system confidentiality will be assured.

...

Confidentiality, in respect to RHCHC, means all discussions, communications, written records or documentation of, by, or about any patient's evaluation, assessment, treatment or services. RHCHC shall guarantee, as much as possible, the right of the patient to privacy.

...

Careless discussion of any aspect of a patient's diagnosis, treatment, prognosis or other personal information with or within hearing of anyone not directly involved in that person's care or "needing" and "authorized" to know is prohibited. Violations will result in disciplinary action.

Preserving patient confidentiality was also incorporated into the RHCHC written Corporate Compliance Program as follows:

Confidentiality of Patient and Proprietary Information. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) must be followed at all times. River Hills CHC has in its possession a broad variety of confidential, sensitive and proprietary information, which if inappropriately released, could be harmful to others and to River Hills CHC. All employees must keep patient information in the strictest confidence. Patient information will not be disclosed to anyone unless authorized by the patient or otherwise permitted by law.

...

Employees may only disclose information to others having an official need-to-know.

Ms. Hopwood had been a registered nurse for 25 years and was a practicing nurse when the Health Insurance Portability and Accountability Act (HIPAA) was enacted in 1993. Ms. Hopwood received appropriate training regarding HIPAA and was fully aware of HIPAA requirements.

The employer completed its investigation of the patient's complaint on June 30, 2017 and discharged Ms. Hopwood five days later.

**REASONING AND CONCLUSIONS OF LAW:**

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on

which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence in the record establishes misconduct in connection with the employment. The weight of the evidence establishes that Ms. Hopwood knowingly and intentionally acted contrary to established nursing protocol, contrary to established clinic protocol, contrary to the employer's confidentiality rules, and contrary to HIPAA on June 15, 2017, when she elected to convey private patient health information in a public space in the presence of unauthorized staff and anyone else could have wandered through. Whether anyone who was not part of the conversation actually heard and understood the conversation is not the issue. The patient had a right and reasonable expectation that all aspects of her communication with the clinic would be private. Ms. Hopwood violated that right and reasonable expectation. Ms. Hopwood is a seasoned registered nurse, but chooses to minimize the seriousness of her gross violation of the patient's privacy on June 15, 2017.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Hopwood was discharged for misconduct. Accordingly, Ms. Hopwood is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Hopwood must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The July 20, 2017, reference 01, decision is affirmed. The claimant was discharged on July 5, 2017 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs