IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 05A-UI-07459-H2T
OC: 06-19-05 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

KIMBERLEE K BENGTSON
204 – 120TH ST
PATON IA 50040

EASTER STAR MASONIC HOME
W 3RD ST
BOONE IA 50036

KIRK QUINN
ATTORNEY AT LAW
615 STORY ST
PO BOX 219
BOONE IA 50036-0219

____
(Administrative Law Judge)

____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 8, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 9, 2005. The claimant did participate and was represented by Kirk Quinn, Attorney at Law. Also participating for the claimant was Judy Howard, former director of nursing. The employer did participate through Denny Bock, Administrator, Kari Krietzinger, Business Manager, (representative) Linda Latimer, Activity Director, and Sherri Amendola, Housekeeping Supervisor. Claimant's Exhibit A was received. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an activity assistant full time beginning October 2, 2002 through June 14, 2005, when she was discharged.

On June 13, 2005, the claimant was allegedly discussing one of the residents in the lunchroom at the staff dinning room table. The claimant was sitting in the employer's lunchroom at the lunchroom table where Becky Gilliam and another CNA were eating when the claimant said she did not believe resident MK should be moved to the Alzheimer's wing. Kerri Krietzinger was sitting at the table eating lunch when she heard the claimant say resident MK was going to be moved to the Hearthstone Wing and she did not think the resident should be moved.

Later Debbie Branford walked into the lunchroom, got her plate, and was sitting down at the table when the claimant said that MK was going to be moved to the Alzheimer's wing and she did not know why. Ms. Branford did not engage in conversation with the claimant.

Ms. Krietzinger does not believe that the claimant had any need to know why or where the resident was being transferred to another wing. Ms. Krietzinger did not ask who had told the claimant that the resident was being moved to another wing. Yet, under Ms. Krietzinger's own definition, whoever told the claimant would have been in violation of the HIPPA policy. No investigation was ever done to find out who told the claimant that the resident MK was being moved to the Alzheimer's Wing. The patients names are outside their doors. The claimant was never interviewed by anyone on behalf of the employer about her version of the events before the decision was made to discharge her. The claimant worked with every resident of the facility and would have know the location of each of their rooms.

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 section 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on 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 App. 1988).

The administrative law judge is not persuaded that any discussion the claimant had in the lunch room violated any HIPPA policies. The claimant was not spreading information to other employees that was not already known to them. It was common for employees to discuss residents and their concerns in the lunchroom. The actual physical location of the residents was common knowledge to all of the employees of the facility.

The employer's evidence does not establish that the claimant deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. There was no wanton or willful disregard of the employer's standards. In short, substantial misconduct has not been established by the evidence. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The July 8, 2005, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/kjw