

1300 files. From 1989 to July 1, 2004, Ms. Neubert had been employed in a county government position performing the same duties.

In the course of her duties, Ms. Neubert had access to confidential information maintained by the Child Support Recovery Unit. The Child Support Recovery Unit contracts with Iowa Workforce Development to gain access to income information for Iowa workers, and Ms. Neubert had access to this confidential information. Ms. Neubert's access to child support collection data, including the income information from Workforce Development, was governed by the provisions of Iowa Code Chapter 252B, Child Support Recovery.

Iowa Code section 252B.10 sets forth criminal penalties for violating the provision of Chapter 252B, as follows:

252B.10 CRIMINAL PENALTIES.

1. Any person who willfully requests, obtains, or seeks to obtain paternity determination and support collection data available under section 252B.9 under false pretenses, or who willfully communicates or seeks to communicate such data to any agency or person except in accordance with this chapter, shall be guilty of an aggravated misdemeanor. Any person who knowingly, but without criminal purposes, communicates or seeks to communicate paternity determination and support collection data except in accordance with this chapter shall be guilty of a simple misdemeanor.
2. Any reasonable grounds for belief that a public employee has violated any provision of this chapter shall be grounds for immediate removal from all access to paternity determination and support collection data available through or recorded under section 252B.9.

The final incident that prompted the discharge came to the attention of Support Recovery Supervisor Jenna Moses on September 20, 2005, when Ms. Moses commenced reviewing the "Interstate Location System Usage Report" for Ms. Neubert for the month of August. Ms. Moses had received the report on September 1. Ms. Moses uses the monthly reports to perform random checks on each employee's access to confidential information. Ms. Moses began her review of Ms. Neubert's August access by reviewing the very first entry on the report. Ms. Moses concluded that Ms. Neubert's conduct regarding that entry appeared suspicious because Ms. Neubert had not prepared a narrative for the related case-file in connection with her access to the confidential information. Ms. Moses closely reviewed the entire report and concluded that Ms. Neubert had inappropriately accessed confidential information in connection with two entries. Ms. Moses concluded her intensive review of the report on September 27.

Ms. Moses then interviewed Ms. Nuebert regarding the two entries. Both entries concerned individuals whose files were part of Ms. Nuebert's assigned caseload. The first entry concerned information about a woman who was the girlfriend of Ms. Neubert's sister's ex-husband. Ms. Neubert advised Ms. Moses that she had been curious about how much money the woman made. The woman was a custodial parent and, therefore, Ms. Neubert would have had no legitimate need to access her income information.

The second entry concerned information about a man who happened to be Ms. Neubert's mother's neighbor and a relative of Ms. Neubert's ex-husband. Ms. Neubert indicated that she had accessed the man's confidential income information because she had overheard he was making good money. The man was a non-custodial parent who was making regular payments

towards his outstanding support obligation for a child who had been emancipated. Under the circumstances, there was no need for Ms. Neubert to review updated income information. Ms. Neubert had wondered whether she had a conflict of interest when the man's file was initially assigned to her. The established protocol for such situations was to advise the supervisor of the possible conflict of interests. Rather than follow this protocol, Ms. Neubert had conferred with a peer and concluded it was okay for her to handle the file.

Based on the provisions of 252B.10(2), Ms. Moses concluded there were reasonable grounds to believe Ms. Neubert had violated the provisions of Chapter 252B in accessing information. Ms. Moses decided to remove Ms. Neubert's access to the information. Because it was necessary for a Support Recovery Office to access the information to perform his/her duties, Ms. Moses decided she had to discharge Ms. Neubert from the employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Neubert was discharged for misconduct in connection with her employment.

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).

Since the claimant was discharged, 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 to misconduct, a discharge her 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).

The evidence in the record establishes that Ms. Neubert engaged in misconduct by intentionally exceeding the scope of her authority to access confidential information on two occasions. However, the evidence also establishes that the employer was aware of the suspicious access on September 20. The employer did not advise Ms. Neubert that the unauthorized access subjected her to possible discharge until October 3. Based on the delay, the administrative law judge concludes that Ms. Neubert's conduct no longer constituted a "current act" at the time of discharge. Accordingly, Ms. Neubert is eligible for benefits provided she is otherwise eligible. The employer's account may be charged.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Neubert was discharged for no disqualifying reason. Accordingly, Ms. Neubert is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Neubert.

DECISION:

The Agency representative's decision dated October 17, 2005, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/kjw