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: 04A-UI-04747-LT
OC 03-28-04 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.

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_____
(Administrative Law Judge)

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_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Employer filed a timely appeal from the April 14, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 18, 2004. Claimant did participate and was represented by Patrick Henrichsen, Attorney at Law. Employer did participate through Brian Mosier and was represented by Michael O'Malley, Attorney at Law. Kathy Chalfant was a subpoenaed witness for the claimant. Employer's Exhibit One was received. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time office manager through April 1, 2004 when she was discharged. The final act was that claimant scheduled two Medicaid (Title IXX) patients for an April 5 appointment without an initial evaluation by Brian Mosier, D.D.S. Employer was concerned about no show patients and lost billing. Evaluations are scheduled for up to 15 minutes and these patients were scheduled for an hour each. Dr. Mosier discussed a verbal policy on August 26, 2003 whereby a patient would be scheduled for an evaluation before being scheduled for treatment. Claimant had no recollection of the discussion of this procedure and scheduled as she always had from Horizon Dental evaluation referrals to Mosier Dental for root canals only after the patient or their parents completed the required paperwork to establish their commitment to the treatment. If the paperwork was not completed, the treatment appointment was not set and another patient would be scheduled in their place. Employer gave claimant no indication, either verbal or written, that her job was in jeopardy for any reason.

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.

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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 issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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).

An employer cannot reasonably expect an employee to accurately follow an altered policy about contingent scheduling processes if it is not written. Claimant followed the Medicaid scheduling procedure to the best of her knowledge and past practice. While there may have been a verbal policy about scheduling discussed on August 26, 2003, at no time was there disciplinary action taken thereafter and prior to the separation about this issue or any other. Without knowledge that she was improperly scheduling Medicaid patients, claimant had no reason to change her procedure. Clear, preferably written, communication is key for the proper performance of job duties and fulfillment of employer expectations. Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The April 14, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

dml/