

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREA J WELLBORN
Claimant

MERCY MEDICAL CENTER
Employer

APPEAL 19A-UI-01215-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/20/19
Claimant: Appellant (2)

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Andrea Wellborn, Claimant, filed an appeal from the February 8, 2019 (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with Mercy Medical Center due to excessive unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on February 26, 2019 at 1:00 p.m. Claimant participated. Employer participated through Amanda Felton, Human Resources Manager, and Barb Baity, Clinic Operation Manager. Employer's Exhibits 1 – 21 were admitted.

ISSUE:

Whether claimant's separation was a discharge due to 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 as a Clinical Scribe – Registered Nurse from October 3, 2017 until her employment with Mercy Medical Center ended on December 26, 2018. (Felton Testimony) Claimant's direct supervisor was Barb Baity. (Felton Testimony) Claimant's schedule was Monday through Friday from 8:30 a.m. until 5:00 p.m. (Felton Testimony)

On December 26, 2018, employer discharged claimant for excessive tardiness and absenteeism in violation of the employer's point-based attendance policy. (Felton Testimony) The last incident, which resulted in claimant's discharge, occurred on December 14, 2018. (Felton Testimony) On December 14, 2018, claimant clocked-in when she arrived at work. (Claimant Testimony) Claimant received a message from the computer that she had clocked-in. (Claimant Testimony) On December 21, 2018, claimant reviewed her time card and noticed that her clock-in was not captured in the timekeeping system. (Claimant Testimony) Claimant notified her supervisor of the issue the same day. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct*. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's version of events regarding her December 14, 2018 clock-in to be credible.

Claimant clocked-in on December 14, 2018 and received confirmation from the computer. When claimant learned that her clock-in on December 14, 2018 was not captured by the timekeeping system, she informed her supervisor of the issue. Claimant's actions on December 14, 2018 were not a breach of her duty to employer or an intentional disregard for employer's interests. The employer has not met its burden of proving a current or final act of misconduct. Without a current or final act of misconduct, the history of other incidents need not be examined. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

DECISION:

The February 8, 2019 (reference 01) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs