

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LISA M HARRIS
Claimant

QHC FORT DODGE VILLA LLC
Employer

APPEAL NO. 21A-UI-02517-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/25/20
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 29, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 5, 2021. Claimant participated personally. Employer participated by Lisa Eastman.

ISSUE:

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 23, 2020. Employer discharged claimant on October 30, 2020 because claimant was believed to have falsified timecards on multiple occasions.

Claimant worked as a full time employee for employer working in medical records. Claimant and the administrator were the only employees who had access to override employer's time clock system.

On October 22, 2020 claimant did an override of her clock in time as she didn't use the timeclock when she entered. Employer found out claimant entered the building at the same time as another employee, yet claimant indicated through her override she'd arrived an hour earlier. Employer discussed claimant's arrival with coworker to ensure that claimant had registered her time differently than when she'd actually arrived. The next day, claimant was found to have left work two hours before her adjustment indicated when she left. Employer received information that claimant left and got a ride home with a coworker. The coworker clocked out two hours before claimant – who'd again done an override on her time leaving.

Employer stated that claimant was questioned about these incidents during her termination and she incredulously responded, "What? You're going to terminate me over three hours?"

Claimant stated that none of these allegations were correct. Claimant stated on October 22 she arrived at the appropriate time, but didn't clock in. She further stated that she decided to walk outside the building and walk around to get to the front of area she was going. She further stated she did this as areas of the building were shut off and required full dress of PPE. She signed in with this person after she'd been working for an hour. Employer stated no parts of the building were shut off at this time of the year.

Claimant stated that she didn't really know the person who was alleged to have taken claimant home on October 23. Employer mentioned claimant was paid a bonus for referring this same third party for employment. Employer further stated that the coworker admitted taking claimant home early on the date in question.

Claimant previously received a warning for not properly clocking in and out of work.

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).


A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

It is the duty of the administrative law judge as the trier of fact in this case, 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 Ct. 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. *State v. Holtz*, 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 believable evidence; 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. *State v. Holtz*, Id. In this matter, employer provided much more support than did claimant. Employer countered each of claimant's denials of employer's initial arguments. Claimant had no further response.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning theft of time. The last incident, which brought about the discharge, constitutes misconduct because theft of time is the equivalent of theft of money. Claimant knew she had to properly use the time clock, and the days the administrator wasn't around claimant repeatedly avoids the time clock and used her editing ability for time to change her own hours. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated December 29, 2020, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

March 12, 2021
Decision Dated and Mailed

bab/mh