

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVISTEIN B LEWIS
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 18A-UI-05213-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/08/18
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 26, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for engaging in conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on May 24, 2018. The claimant, Travistein B. Lewis, participated. The employer, The University of Iowa, participated through Ellen Twinam, Senior HR Director; and Mary Eggenburg, Benefits Specialist. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a nursing assistant, from June 6, 2016, until January 10, 2018, when she was discharged. On December 5, 2017, claimant assisted a patient who was at the hospital. During the patient's time at the hospital, the patient had his wallet stolen. Later, at 6:07 p.m., claimant used that patient's EBT card to purchase approximately \$370.00 worth of items at Costco. Claimant contends she purchased this EBT card from a couple outside the Waterfront Hy-Vee in Iowa City. The employer learned about the incident in late December. During its investigation into the incident, the employer learned that Costco had video of claimant using the EBT card on December 5 and learned that claimant changed the card's PIN. Claimant last reported to work on January 2, 2018. Claimant was scheduled to work on January 7, but she was suspended from working that day. On January 9, Twinam, a nurse manager, and a representative from hospital safety and security met with claimant about the alleged EBT card theft. Claimant denied stealing the EBT card from the patient. The following day, claimant submitted a resignation to her supervisor, but the employer did not accept this resignation. Instead, the employer discharged claimant. Following this incident, claimant entered a plea related to a charge of credit card fraud related to the EBT card. The employer explained that theft is particularly egregious at the hospital, when the victim is a

vulnerable patient who needs to have confidence in the institution in whose care he has placed his health.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

Iowa Code § 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.

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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

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 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 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. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony credible. The administrative law judge believes that claimant stole the patient's EBT card from him while he was under her care in the hospital. Simply, the administrative law judge found claimant's explanation for how she acquired the card too convenient a coincidence to be believable.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. In this case, claimant stole a patient's EBT card and received a deferred judgment in exchange for a guilty plea to a charge of credit card fraud. Claimant's actions were in deliberate disregard of her employer's interest in maintaining patient safety and security. The employer has established that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The April 26, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn