

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LATAVIA S SWEENEY**

Claimant

**APPEAL 16A-UI-08354-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HANDICAPPED DEVELOPMENT CENTER**

Employer

**OC: 07/03/16**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Latavia S. Sweeney (claimant) filed an appeal from the July 25, 2016, (reference 01) unemployment insurance decision that denied benefits based upon the determination Handicapped Development Center (employer) discharged her for dishonesty in connection with her work. The parties were properly notified about the hearing. A telephone hearing was held on August 18, 2016. The claimant participated personally. The employer participated through Community Residential Services Program Director Courtney Brankovic. Employer's Exhibits 1 through 5 were received.

**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: The claimant was employed full-time as Support Staff beginning on October 28, 2015, and was separated from employment on July 6, 2016, when she was discharged.

The employer provides secured homes for its clients. Its employees each have a security badge to gain entry at the homes where they work. During the claimant's employment, the badges and the badge swipes were used solely for security purposes. However, the employees would regularly leave the doors open so a badge swipe was not necessary to gain entry. Additionally, when the claimant was the first person working on a shift, she had been trained not to enter the house first, but to wait for the bus that was transporting the residents.

On July 1, 2016, Teresa Bracker, one of the claimant's co-workers, reported that on June 20, 2016 the claimant had arrived 45 minutes late to work and told everyone she was going to record her normal start time. Community Residential Services Program Director Courtney Brankovic discovered the claimant had reported her scheduled start time on her time card. Brankovic then looked back at the claimant's security badge swipes and compared them to the start time recorded on her time card. Based on this information she determined the claimant had been late to work and recorded her scheduled start time on 45 separate occasions.

Additionally, on another 52 occasions the claimant did not have any badge swipes to compare against her time card. Brankovic did not audit any other employee's badge swipes and time card records. The claimant was discharged for falsifying her time card. The claimant had not received any prior warnings related to reporting her time on her time cards or how she utilized the secured entrances.

After the claimant's discharge, the employer announced to the employees that the badge swipes would be used to verify time card records. The employer now audits all employees' badge swipes and time card records once a month.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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).

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607

(Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

The decision in this case rests, at least in part, upon the credibility of the claimant and Bracker in determining what occurred on June 20, 2016. The employer did not have Bracker at the hearing; however, Bracker's signed statement was entered into the record. The claimant denied she was late on June 20, 2016 and the employer did not provide any other corroborating evidence to support Bracker's statement that the claimant arrived late to work. The exhibits of the badge swipes provided by the employer do not include the claimant's badge swipe on June 20, 2016. Mindful of the ruling in *Crosser*, *id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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). 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). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The claimant credibly testified she was not late to work on June 20, 2016 and did not falsify her time card. The employer has also claimed the claimant had a pattern of falsifying her time card. However, the claimant credibly testified and the employer acknowledged that the badge swipe was only used for security during the claimant's employment and that other employees regularly left the entrance doors open rendering a badge swipe unnecessary. The claimant testified and the employer did not refute that she had been trained not to enter the house until after the residents' bus dropped them off when she was scheduled to be first present on the shift which could have accounted for a late badge swipe, but accurately reported time card.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The claimant had no knowledge prior to her termination that a badge swipe would be used to track her time card entries. The claimant did not engage in any disqualifying misconduct. Accordingly, benefits are allowed.

**DECISION:**

The July 25, 2016, (reference 01) unemployment insurance decision is reversed. The Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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