

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JASON T SYLVARA**  
Claimant

**LINK ASSOCIATES**  
Employer

**APPEAL 17A-UI-11468-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/08/17  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 30, 2017, (reference 01) unemployment insurance decision that denied benefits based on his discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on November 30, 2017. The claimant participated and testified. The employer participated through Corporate Operations Director Jay Brums and witnesses Jess White, Adam Wolfe, and Tiffany Steenblock. Employer's Exhibits 1 through 8 were received into evidence.

**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 full time as an employment training specialist from July 30, 2009, until this employment ended on October 11, 2017, when he was discharged.

The employer provides assistance services to adults with intellectual disabilities. The claimant's job duties were to provide support, supervision, and training to clients who have jobs in the community. On October 4, 2017, claimant's immediate supervisor, Wolfe, received an email from Program Coordinator Michelle Webb, informing him she had received a complaint from someone at Menards, where a client worked, regarding claimant. (Exhibit 4). The Menards employee reported that claimant would just stand at the door and play on his phone and never followed the client outside. Based on this information Wolfe and White began an investigation. They spoke to the Menards employee, who confirmed what she had told Webb, and then visited the client at the store on October 6. Wolfe and White arrived at Menards at 2:50 p.m. and observed claimant enter the store at 3:12 p.m. Wolfe and White spoke with the client, who indicated he had only been with claimant once that day.

On October 10, 2017, Wolfe, White, and Employment and Day Program Director Tiffany Steenblock met with claimant to interview him about the situation. White testified she

specifically asked claimant to describe the work he did with the client on October 6. According to White claimant indicated he worked with the client from 2:15 to around 3:30. White testified she then asked claimant what kind of support he provided. According to White claimant responded he would stand inside the door by the check out to observe the client and did not go in or out of the building. Wolfe and Steenblock confirmed White's testimony regarding this meeting. On October 11, 2017, Wolfe went to Menards to review security footage for October 6. The only time Wolfe saw claimant entering the store on October 6 was at 3:12 and he was observed leaving at 3:19, just before Wolfe and White were seen on footage approaching the client to speak to him. (Exhibit 3). The footage did not show claimant entering or leaving the store at any other time. Brums testified he spoke directly to the store's loss prevention officer who confirmed the time stamps on the video were accurate. Based on what the employer found over the course of its investigation, it concluded claimant had billed as though he worked with the client from 2:15 to 3:40, when in reality he had only worked with the client from 3:12 to 3:19. The employer explained this conduct violates both its policies regarding honesty and the falsification of records and regulations governing Medicaid billing. The decision was then made to discharge claimant from employment.

During the hearing claimant testified he did arrive at Menards at 2:15, but observed the client from his car. Claimant testified he did not actually interact with the client until the time he was seen on the security footage, but that this was because the client did not like to talk to him. Claimant admitted he told the employer he was observing the client in the store because he had done so for seven minutes that day. According to claimant he never mentioned observing the client from his car to the employer because he was in shock about the situation. Steenblock testified at the time of his termination claimant was given a final opportunity to provide the employer with additional information, but had nothing to add and continued to insist he was in the store.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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). 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 decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

The employer's witnesses provided consistent testimony throughout the hearing, while the claimant contradicted his own testimony at several points throughout the hearing. Furthermore, the employer's testimony indicates claimant was given every opportunity to explain where he was on October 6, but that he maintained he was in the store with the client until the time of the hearing where, for the first time, he claimed to have been observing the client from his car. Claimant offered no plausible explanation as to why he did not provide the employer with this information sooner. After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

Reporting one is working during time when one is not working is theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*,

585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. Reporting time to be billed to Medicaid for services that were not actually provided is an act of deliberate dishonesty, and possibly fraud. In this case, the claimant deliberately disregarded the employer's interest by knowingly violating a company policy and likely state and federal Medicaid billing laws when he reported he was working with the client for an hour and 25 minutes on October 6, when in reality he worked with that client for seven minutes. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

**DECISION:**

The October 30, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs