

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KELCEY B BLOMMERS
Claimant

SURGICAL ASSOCIATES
Employer

APPEAL 20A-UI-15295-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
PL 116-136, Sec. 2104(b) – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

On November 18, 2020, the employer filed an appeal from the November 9, 2020, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 21, 2021. Claimant did not register for the hearing and did not participate. Employer participated through practice administrator Jenna Tanner.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?
Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 11, 2020. Claimant last worked as a full-time front desk coordinator. Claimant was separated from employment on July 28, 2020, when she was terminated.

Employer has a policy requiring employees to accurately record their hours. Claimant was aware of the policy.

Claimant worked at an off-site clinic several days per week. Claimant was required to record her work time using a time card punch. Claimant often came into work late and left early, which left the nurses at claimant's clinic without front desk assistance. The nurses at the off-site clinic informed practice administrator Jenna Tanner of this. Tanner began monitoring the claimant's time card and when she was leaving and arriving to work.

On July 16, 2020, claimant manually adjusted her time card to state she arrived at 7:10 a.m., but the nurses at the clinic reported claimant actually arrived somewhere between 8:45 a.m. and 9:00 a.m.

On July 21, 2020, claimant manually adjusted her time card to state she left work at 4:45 p.m., but the nurses at the clinic reported claimant actually left work at 4:15 p.m.

On July 22, 2020, claimant manually adjusted her time card to state she left work at 4:45 p.m., but the nurses at the clinic reported claimant actually left at work 4:15 p.m.

On July 23, 2020, claimant manually adjusted her time card to state she arrived at work at 7:10 a.m. and left work at 4:30 p.m. In fact, claimant arrived to work at 9:30 a.m., and left work between 3:00 and 3:30 p.m.

On July 28, 2020, Tanner confronted claimant with this information. Claimant could not explain why she entered the time punches manually and was evasive regarding arriving at work late and leaving early. Employer terminated claimant's employment.

Claimant had never been previously disciplined for similar conduct.

Claimant has not received any unemployment insurance benefits since filing this claim.

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.

Iowa Code § 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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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).

In this case, claimant's conduct amounts to theft from the employer. Her actions were taken with deliberate disregard of employer's interests and amount to misconduct, even without prior discipline.

Claimant has not received any benefits since filing the claim, so she has not been overpaid and employer will not be charged for benefits.

DECISION:

The November 9, 2020, (reference 01) unemployment insurance decision is reversed. The 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



Christine A. Louis
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February 9, 2021
Decision Dated and Mailed

cal/kmj

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.