

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

RHONDA R KURTZ
Claimant

APPEAL NO. 18A-UI-01867-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 01/14/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Rhonda R. Kurtz, the claimant, filed a timely appeal from a representative's unemployment insurance decision dated January 31, 2018, reference 01, which denied unemployment insurance benefits, finding the claimant was discharged on January 3, 2018 for repeated tardiness for reporting to work after being warned. After due notice was provided, a telephone hearing was held on March 7, 2018. Claimant participated. Participating as the claimant's non-attorney representative was Mr. Douglas Kurtz. The employer participated by Ms. Rhonda Wagoner, Benefits Specialist; Ms. Julie Kruse, Principal, Willard Elementary School; Ms. Shaela Mason, Director of Human Resources; and Ms. Heidi Liventals, Special Education Teacher. Employer's Exhibits 1 through 8 were admitted into the hearing record. Claimant's Exhibits A through D were admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Rhonda Kurtz was employed by the Des Moines Independent Community School District from August 19, 2002 until January 3, 2018, when she was discharged from employment. Ms. Kurtz was employed as a full-time Special Education Associate and was paid by the hour. Her immediate supervisor was the school principal, Ms. Julie Kruse. In her job, the claimant assisted special need teachers, by accompanying a special needs child during the school day following a detailed time/duty schedule each day.

Ms. Kurtz was discharged on January 3, 2018, (when school resumed) because of an incident that had taken place on December 20, 2017. On that date, the claimant had been temporarily reassigned from assisting her special needs student by the special education teacher, Heidi Liventals. Ms. Liventals assigned the claimant to go and to cover the school cafeteria room until 11:45 a.m., when Ms. Kurtz's one half hour lunch was scheduled to begin. Ms. Kruse, the school principal was walking out of her office at 11:39 a.m. that morning, and personally observed the claimant leaving the cafeteria before her 11:45 a.m. lunch was to begin. Because Ms. Kurtz had previously been warned and then suspended for failing to follow her prescribed

assignment times during the working day. Ms. Kruse therefore verified the exact time that she had seen the claimant leaving and conferred with Ms. Livialt regarding the claimant's scheduled work assignments that day. Based upon her personal observations and the verification she received from Ms. Livialt, the principal reasonably concluded that Ms. Kurtz had violated previous warnings that had been given to her by failing to adhere to her scheduled times and taking an extended lunch break.

Ms. Kurtz had been suspended on October 26, 2017 for ten days for failing to follow her work schedule, being tardy between classes, and overextending her lunch periods. The claimant had been warned at that time that she must follow the daily scheduled times unless directed otherwise by the principal or Ms. Livialt. Ms. Kurtz had at first followed the warnings given to her on October 26, 2017, but had started to arrive late to work or to class after her lunch period on a number of occasions with her tardiness ranging from three minutes to eight minutes late, following her October 26, 2017 warning and suspension.

In addition to the general expectation that school employees should adhere to the schedules, the claimant's lack of punctuality and long lunches were important to the school district because the student Ms. Kurtz was assigned to was under an individual education plan. The failure of the claimant to provide assistance for the minutes required under the plan jeopardized federal funding for the services the claimant was hired to perform. Ms. Kurtz had previously been warned in addition to the October 26, 2017 warning and ten-day unpaid suspension, the claimant had also been given a written reprimand on January 20, 2017 for not following her work schedule, tardiness between classes, and unauthorized absences, and also reminded on a number of occasions to adhere to her required work schedule. On January 13, 2017, Ms. Kruse discussed the claimant's unsatisfactory attendance with Ms. Kurtz. The claimant had also been warned on March 31, 2016 about unsatisfactory attendance. Ms. Kurtz was reprimanded on February 4, 2015 for failing to adhere to the district's lunch period policy.

The daily schedule provided by the district to the claimant and other special education associates sets the time that each activity ends followed by the beginning minute for the next assigned work activity. Although the schedule may provide that the next activity begins on the next minute, the school district factors in a small but reasonable amount of time for the associate to travel if necessary, from one location in the school to begin the next assigned task. The employer accommodated Ms. Kurtz by giving her an additional chance to remain employed on one occasion, because of Ms. Kurtz's assertion that she needed extra break time to place ice on her injured arm.

The claimant, in her responses to the school district's disciplinary actions, asserts that various clocks in the school are not synchronized to the same time and that small variations from clock to clock in the school made it appear that she was tardy when she was not. The Willard Elementary School's chief engineer verified that the clock system at the Willard facility is setup on a master clock system that controls all hard-wired clocks in the building and that all clocks in the school's bell system are on the same system, synchronized and controlled by the master time control in the building. In verifying the claimant's most recent infraction, the school district also relied upon security video to confirm that the claimant had left for lunch early and returned late.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional job-connected misconduct sufficient to warrant the denial of unemployment insurance benefits. It has.

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).

In discharge cases, the employer has the burden of proof to establish disqualifying misconduct on the part of the claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

The employer has established, by a preponderance of the evidence in this case, that Ms. Kurtz has been repeatedly counseled, warned, and suspended for failing to adhere to her daily work schedule, reporting to assignments late, and taking time away from work for her 30-minute lunch break that exceeded the time allowed. The employer followed a reasonable course of action by using progressive discipline and by providing the claimant repeated opportunities to remain employed.

The employer also verified that its time-keeping systems were accurate and controlled by a central system. During the final incident that caused the claimant's discharge, Ms. Kurtz was

personally observed by the Willard school principal leaving her job assignment several minutes before the 11:45 a.m. set time and school systems also confirmed that the claimant had returned to work after the 12:15 p.m. time that she was expected to do so. The employer's witnesses testified that Ms. Kruse's personal observations were also verified by video security tapes.

The administrative law judge is aware that Ms. Kurtz maintains that any attendance issues were caused by clocks in the facility that were not synchronized and that Ms. Kurtz herself was keeping a detailed record of each day's activities however, the record kept by the claimant itself contains entries where Ms. Kurtz has misstated beginning and ending times. Ms. Kurtz had also been placed on notice by the employer that the school's official time-keeping systems were the systems to be followed. The evidence in the record does not establish that the clocks were so unsynchronized so as to excuse the numerous violations by the claimant. In addition, the evidence establishes that only the claimant and none of the other associates had difficulty following the schedules as set forth to them by the school district. For these reasons the administrative law judge concludes that the employer has, by a preponderance of the evidence, established that the claimant's discharge took place under disqualifying conditions.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes the claimant was discharged for misconduct. Accordingly, the claimant is disqualified for benefits until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and it otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant.

DECISION:

The agency representative's unemployment insurance decisions dated January 31, 2018, reference 01, is affirmed. The claimant was discharged for work-connected misconduct. Unemployment insurance benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs