

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMY J DALTON**  
Claimant

**APPEAL NO. 12A-UI-11691-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST JANITORIAL SERVICE INC**  
Employer

**OC: 08/26/12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Amy Dalton filed a timely appeal from a representative's decision dated September 18, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 24, 2012. The claimant participated. The employer participated by Mr. Greg Trosky, branch manager.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Amy Dalton was employed by Midwest Janitorial Service, Inc. from August 22, 2011, until August 20, 2012, when she was discharged from employment. Ms. Dalton worked as a part-time custodian and was paid by the hour. Her immediate supervisor was Dave Mueller.

Ms. Dalton was discharged on August 20, 2012, when the employer concluded that Ms. Dalton had falsified her time reporting by phoning in on the company's automated system, indicating she was clocking in at the worksite at 5:23 p.m. that day. Subsequently, two other employees at the work site contacted the employer to report that Ms. Dalton was not on the job site. Subsequently, the employer concluded that Ms. Dalton did not arrive at the job site until approximately 6:00 p.m. that evening. When interviewed about the matter, Ms. Dalton provided no excuse and was terminated for a timecard falsification.

Under company policy, employees are subject to discharge if they falsify company records.

It is the claimant's position that she was authorized to clock in by "cell phone" by her immediate supervisor at a different location and felt that clocking in at the Mercy Medical facility where she was assigned during the incident in question would not violate company rules. It is the claimant's belief that she actually reported to the job site at approximately 5:40 p.m. on the day

in question. It is the claimant's further position that her immediate supervisor had elected only to reprimand her for her time-clock violation and reduce her working hours in the future.

**REASONING AND CONCLUSIONS OF LAW:**

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

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. 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 App. 1992).

In this matter, the evidence in the record establishes that Ms. Dalton used her cell phone to clock-in on the company's automated timekeeping system at 5:23 p.m., leading the company to believe that she was on the job site and performing services for the company at that time. Ms. Dalton was not at the job location or performing services at the time that she clocked in via cell phone and did not arrive at the job location until a substantial period of time later. Other employees had complained and indicated the claimant had not arrived at the job site until

6:00 p.m. that evening. When questioned about the matter by her employer, Ms. Dalton provided no excuse for her conduct and a decision was made to terminate the claimant from employment. At the time that the company's branch manager made a decision to terminate Ms. Dalton from her employment, Ms. Dalton did not indicate the matter had previously been resolved by a verbal warning from her supervisor and/or a cut in her working hours.

Under company policies, intentional falsification of working hours is an offense that subjects an employee to immediate termination from employment. The record in this matter clearly establishes that Ms. Dalton reported to the company that she was at work and performing services at a time when she was not at the location. This conduct showed a willful disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated September 18, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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