

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KRISTIE BRIGGS**  
Claimant

**CENTRAL IOWA HOSPITAL  
CORPORATION**  
Employer

**APPEAL 21A-UI-13145-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/14/21**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 27, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion that she was discharged for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on August 6, 2021. The claimant participated and testified. The employer participated through Human Resources Generalist Christina Syhavong. No exhibits 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:

The claimant worked for the employer full-time as a dietetic clerk from July 13, 2004 until March 17, 2021, when she was discharged. The claimant's immediate supervisor was Manager Madalyn Craigmile.

The employer has a recording of work time policy in its employee manual. It forbids an employee from clocking in another employee on the time clock. It states behavior such as this that consists of time record fraud can lead to immediate termination of employment. This policy is listed on the employer's Intranet system.

On February 25, 2021 and February 26, 2021, the claimant was going to be tardy for her shifts. The claimant asked her mother Sherry Briggs (Ms. Briggs), to clock her in, so she would not be tardy. The claimant's time card was submitted for approval on March 1, 2021. Management became aware of the discrepancy around the time the claimant's time card was submitted for approval.

On March 16, 2021, Ms. Craigmile and Human Resources Director Susan Sweitzer interviewed the claimant and Ms. Briggs, for the two time clock incidents occurring on February 25, 2021 and February 26, 2021, described above. Ms. Briggs and the claimant confirmed what occurred on those days. Ms. Craigmile and Ms. Sweitzer were not made available to testify.

On March 17, 2021, Ms. Craigmile, Manager Luke Shogren and Ms. Sweitzer terminated the claimant's employment.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to non-disqualifying conduct.

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.

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).

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

"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.

Iowa Admin. Code r.871-24.32(8) provides:

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

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 claimant has argued she did not knowingly violate the employer's time recording policy because she was unaware of its contents. The claimant also claims other employees engaged in similar behavior and were not disciplined.

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.*

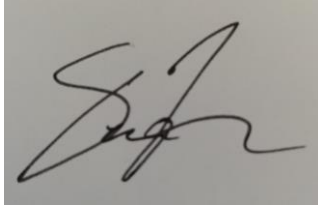
After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the claimant's testimony more generally credible than the employer's testimony. This is because the claimant is speaking for first-hand knowledge and experience of the events. However, the administrative law judge does not find the claimant's allegation that other employees engaged in similar behavior credible.

It does not matter whether the claimant knew about the employer's policy or not. Time card fraud 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. In this case, the claimant deliberately disregarded the employer's interest by stealing its payroll by engaging in time card fraud.

However, the claimant is not disqualified because the act for which she was terminated is not a current act. As a result, this reason for terminating her does not satisfy the administrative rule in Iowa Admin. Code r.871-24.32(8).

**DECISION:**

The May 27, 2021, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for conduct too remote to be disqualifying misconduct. Benefits are paid, as long as the claimant is otherwise eligible.

A handwritten signature in black ink on a light gray background. The signature is stylized and appears to read 'Sean M. Nelson'.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

August 16, 2021  
Decision Dated and Mailed

smn/lj