

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THERESA M PUDLO**  
Claimant

**APPEAL NO. 09A-UI-04140-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 01/25/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Theresa Pudlo filed an appeal from a representative decision dated March 5, 2009, reference 01, which denied benefits based upon her separation from Care Initiatives. After due notice, a hearing was scheduled and held in Council Bluffs, Iowa on April 14, 2009. Ms. Pudlo participated personally. Participating on behalf of the claimant was her attorney, Mr. Dustin Kreifels. The employer participated by Lynn Corbeil, Attorney, Johnson & Associates and witnesses, Kellie Jimerson, Administrator, Ms. Cam Paul, Office Manager; Heather Rasmussen and Michelle Gifford. Exhibits One through Eleven and Exhibits A and B were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed by the captioned employer doing business as Atlantic Nursing and Rehabilitation from May 31, 2007 until November 17, 2008 when she was discharged for violating the company's time reporting policies. Ms. Pudlo had worked in a number of capacities for this employer doing work as a rehabilitation technician, business office assistant and activity assistant and was therefore offered and accepted the position of activity coordinator effective November 4, 2008. The claimant was employed full time and was paid by the hour. Her immediate supervisor was Kellie Jimerson.

The claimant was in a training status in her position of activity coordinator, however, training had been disrupted due to other job requirements and the claimant and employer had agreed that time would be given on November 6 and 7 to reorganize the activity office and department and make preparations for undertaking her new job assignment. The claimant to receive training during the following week. Due to staff coverage issues, Mr. Pudlo's training was delayed as she performed other services that were necessary for the employer. Because of the delay in

training Ms. Pudlo was not able to perform some job assignments. Although the claimant was aware that she was expected to clock in and out, the claimant did not do so. Ms. Pudlo instead stayed on her "own time" to attempt to organize the office and activity area. The claimant neglected to punch in and informed another employee to clock the claimant out at approximately 5:00 p.m., although Ms. Pudlo knew or should have known that she had worked substantially later until approximately 9:00 p.m.

On November 10 and November 11, the claimant worked beyond the 8:00 a.m. to 5:00 p.m. working hours but did not claim the additional working hours. Instead she instructed another company employee to clock her in for "eight hours," although the claimant was aware that she had worked substantially longer.

The employer became aware of the claimant's failure to properly clock in and out and Ms. Pudlo's "working off the clock." In addition, complaints were received with respect to the manner in which the claimant had formed some resident activities that were disruptive.

After considering the matter the employer decided to terminate Ms. Pudlo for working off the clock and failing to clock in and out as required. Ms. Pudlo was aware of the company policy and had been specifically reminded of it in an evaluation that had been given to her earlier in the year. The employer was concerned about violations of wage and hour law requirements and liability because the claimant was working off the clock in violation of company policy and federal wage and hour laws.

It is the claimant's position that her discharge was contrived by the employer because the employer was dissatisfied with the manner in which the claimant had performed other work. The claimant does not "remember" whether she had worked substantially beyond the eight hours authorized or whether another employee was instructed to clock the claimant in for eight hours work.

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

The question is whether the evidence in the record establishes the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits. It does.

The evidence in the record establishes that Ms. Pudlo was aware of the company requirement that she correctly report her work times clocking in and out when she left the premises or left for lunch or breaks. The claimant had also been reminded of this obligation in an evaluation that had been given to her earlier in the year. The evidence in the record establishes that on November 10 and 11, 2008, Ms. Pudlo did not punch in and out and worked substantially beyond the eight hours of work authorized to her by the employer. The evidence also establishes that the claimant instructed another employee to "clock her in for eight hours." Although the claimant was aware that she had been on the premises performing services for the employer for a substantially longer period of time each day.

Based upon the evidence in the record the administrative law judge must conclude that the claimant knew or should have known that she had worked substantially longer and that providing false information with respect to her working times was a disregard of the employer's interests and reasonable standards of behavior which the employer had a right to expect of its employees under the provision of the Iowa Employment Security Act. The administrative law judge must therefore conclude that the claimant was discharged for misconduct in connection with her employment.

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.

For the reasons stated herein the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions. Benefits are withheld.

**DECISION:**

The representative decision dated March 5, 2009, reference 01, is affirmed. Theresa Pudlo is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, providing that she is otherwise eligible.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css