

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JILL M SOPER
Claimant

GROWMARK INC
Employer

APPEAL 16A-UI-04915-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/10/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 26, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged due to dishonesty in connection with her work. The parties were properly notified of the hearing. A telephone hearing was held on May 11, 2016. The claimant, Jill M. Soper, participated. The employer, Growmark, Inc., participated through Raelene Maas, the human resources manager. Employer's Exhibit A was received and admitted into the record without objection.

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: Claimant was employed full time as an administrative assistant from July 5, 2011, until this employment ended on April 8, 2016, when she was discharged.

Claimant's typical schedule was 8:00 a.m. until 4:00 p.m. Claimant left work at noon on Friday, March 25, 2016. She had permission from her supervisor to leave early that day. Claimant left without clocking out. The following Monday, she received an email from payroll asking what time she left on March 25. Claimant immediately replied that she had left at 4:00 p.m., as that was her standard departure time. Claimant testified she was busy that morning and unintentionally misstated the time she left work. Claimant did not copy her supervisor on her response email, though it was the employer's standard practice that employees do this.

Subsequently, claimant's supervisor learned that her time records indicated she left at 4:00 p.m. on March 25, when in actuality she had departed at noon that day. Claimant spoke with her supervisor's boss about this issue on April 4, 2016. When the error was pointed out to claimant, she emailed payroll and asked that her clock-out time for March 25 be adjusted to 12:00 p.m., when she actually left work. Claimant copied her supervisor on this email.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

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 an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Claimant credibly testified that she did not intentionally falsify her departure time on Friday, March 25. She instinctively replied to the payroll inquiry with her standard departure time, rather than

taking a moment to verify the date in question and her actual departure time for that date. While claimant may have been careless in her response, one incident of carelessness is insufficient to establish disqualifying misconduct. As the employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The April 26, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/css