

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

CHELSEI L INGLES

Claimant

and

CEDAR COUNTY

Employer

: **APPEAL NUMBER:** 22B-UI-16954

: **ALJ HEARING NUMBER:** 22A-UI-16954

:

: **EMPLOYMENT APPEAL BOARD**

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DECISION

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NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2 96.3-7

DECISION

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Chelsi Ingles, worked for Cedar County as a salaried Public Health Manager from January 3, 2022 through July 22, 2022. According to the Employee Handbook she received, her hours were from 7:30 a.m. to 4:00 p.m. However, Jane Caes (previous Director of Public Health and Claimant's former supervisor) informed her that much of her time would be spent out in the community and that her hours would not necessarily fit the handbook timeframe. In addition, the Claimant was required to be on-call to answer phone calls 24/7.

The Claimant was given a key fob that allowed her entry into the building before and after standard business hours. The fob recorded when employees entered and departed buildings, if the fob was utilized. The Claimant frequently 'fobbed in' prior to 7:30 a.m., with her supervisor's knowledge and permission, to attend Board meetings and complete reports. She sometimes worked until 9:00 p.m., which

resulted in ‘fobbing out’ after hours. The Claimant’s hours were also logged in the Nightingale time system, which required her to record hours spent performing various work for various grants that funded the Claimant’s position. Many of her grants required her to listen to numerous webinars, which she oftentimes did during the early morning hours as she got ready for work. The Claimant also maintained a Cedar County payroll timesheet. She maintained communication with Ms. Caes throughout her employment if ever a question arose about her hours.

At some point, Ashley Hansen (Cedar County Business Manager) noticed the Claimant’s Nightingale System timesheet recordings were different from her Cedar County payroll timesheets and key fob reports. Ms. Hansen reported her observance to the Claimant’s then supervisor Jane Caes, but no discussion was ever held with the Claimant about how she recorded her time; nor was she ever told to conduct her duties differently.

Beginning June of 2022, Stephanie Wagaman became the new Director of Public Health. Ms. Wagaman never expressed her expectations of the Claimant, nor did she ever direct the Claimant to change her hours or time-keeping methods. Ms. Wagaman had been present when former Director Caes explained to the Claimant that her hours would vary outside standard work hours.

On June 6, the Claimant was supposed to attend a City Council meeting that evening. Earlier in the day, the Claimant was already in Lowden looking into a mold problem at a local daycare. She was called away by her son’s school because he had had a seizure and required emergency medical attention. The Claimant immediately contacted Ms. Caes to explain the situation. The Claimant never made it to the City Council meeting, and was reimbursed for mileage for that day. It came to Ms. Wagaman’s attention that the Claimant didn’t attend the City Council meeting as expected, yet she was reimbursed for travel that day. This triggered an investigation into the Claimant’s hours reported versus hours actually spent at the building and doing various activities.

On July 20, 2022, the Claimant listened to a webinar from home at 5:00 a.m., then fobbed in at 6:36 a.m., which she had done in the past without incident. She entered her start time as 5:00 a.m. on her Cedar County timesheet, but 6:36 a.m. on her Nightingale timesheet, which is the time her key fob recorded. Ms. Wagaman confronted her about time theft, which she denied. This was the first time she heard such an accusation. She had never been reprimanded, or issued any warnings about the way she spent her time, or how she recorded her hours. The Employer discharged the Claimant on July 22, 2022 because she often claimed hours worked that did not correlate with the hours the Claimant was in the building.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

871 IAC 24.32(4) provides:

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In the cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. The Employer did not refute the Claimant's testimony regarding her previous supervisor's explanation of how the Claimant's job responsibilities would oftentimes take her outside the standard office hours. Neither did Ms. Wagaman deny that she was present at the time this information was conveyed to the Claimant. Given there were three different ways for her time to be recorded, it should be expected that the recorded hours sometimes varied.

The fact that Ms. Hansen reported to Ms. Caes what the former perceived as the Claimant's time-keeping discrepancies, and yet no action ever came of it, tends to corroborate the Claimant's testimony that she was in regular communication with Ms. Caes when questions arose about her work. It is not wholly unreasonable to assume that Ms. Caes found no problem with the way the Claimant performed her work and recorded her time. The Employer had never issued any prior warnings to her during Ms. Caes's tenure as director, which makes it more probable there was no problem with the Claimant's work or time-keeping.

The Claimant provided a reasonable explanation (family medical emergency) as to why she didn't attend the City Council meeting, which she explained to her supervisor. The fact that she was reimbursed for her travel expenses to Lowden was due to her job responsibility to meet with a local daycare. Thus, her request for reimbursement was not unjustified. As for the June 20th incident, the Claimant recorded her time as she had always done in the past without any repercussion. There is no record that she was ever disciplined for this in the past. Based on this record, we find the Employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated October 12, 2022 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn