

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAREN D HILDEBRAND
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 16A-UI-07645-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/05/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 1, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 28, 2016. Claimant participated. Employer participated through area supervisor Nancy Nourse. Employer exhibit one was admitted into evidence with no 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 a store manager from September 7, 1990, and was separated from employment on May 24, 2016, when she was discharged.

Claimant was discharged for violating the employer's scheduling and time clock procedures and honesty and integrity policy. The employer has a policy that requires employees to accurately report hours worked. Employer Exhibit One. The employer also has a policy that "[a]ll employees are obligated to immediately report any suspected fraudulent time clock activity or violation of this policy to the Manager/Supervisor or anyone within the chain of authority over the store." Employer Exhibit One. The employer has an accurate hour reporting memo that comes out quarterly. Employer Exhibit One. The employer has a policy that supervisors, including claimant, are to periodically monitor video to ensure employees are not working off the clock and reporting their time correctly. If an employee is not following policy or procedures, a corrective action should be issued. Claimant was aware of the policies. Employer Exhibit One.

The final incidents started during the pay period April 17, 2016 to April 30, 2016. The payroll for this pay period was sent to the employer on May 2, 2016, and checks were issued on May 7, 2016. For this pay period, claimant had made multiple changes/edits to an employee's (Darcy's) clock in and clock out times. Claimant made edits on eight out of Darcy's ten shifts during the pay period (April 17, 2016 to April 30, 2016). During the pay period, Darcy would go

outside and leave in the afternoon and not clock out. Darcy would come in the next day for her shift and then clock herself out from her previous shift. Darcy would then write down on a clock out slip when she had left on her pervious shift. Claimant would then edit Darcy's time out for the specified shift without reviewing any surveillance video to make sure Darcy wrote down the correct time. This happened on eight separate occasions during the pay period, which resulted in Darcy claiming an extra three hours and fifty minutes. When Ms. Nourse reviewed all of the available video, there were more incidents during other pay periods dating back to the beginning of March 2016.

Around May 17, 2016, Ms. Nourse discovered the edits claimant had made to Darcy's clock out times when she audited claimant's store. On May 17, 2016, Ms. Nourse questioned claimant about whether she had investigated the edits that she had made. Claimant had not done any investigation; all claimant had done was write the dates and times down of the edits. Ms. Nourse told claimant that the situation was being investigated. Darcy had already been paid for this pay period by May 17, 2016. Ms. Nourse reviewed the store's surveillance video as far back as it would go to determine when Darcy would leave from her shifts. Ms. Nourse determined that Darcy claimed an extra three hours and fifty minutes. Ms. Nourse then obtained statements from Darcy and claimant. Darcy stated she had done it just a couple of times and that she had received phone calls while she was outside and had to leave because it was a family emergency. Claimant stated on one occasion she had looked for Darcy, but could not find Darcy and noticed Darcy was still clocked in. Claimant also noticed a pattern of Darcy not clocking out properly. Claimant wrote down the dates and times she had to make edits for Darcy, but did not watch any surveillance video. Claimant showed Ms. Nourse the dates and times she questioned. Claimant had access to the surveillance video, but did not review the surveillance video.

Claimant never questioned Darcy about the edits or Darcy's failure to properly clock out. Claimant did not give Darcy a corrective action for failing to properly clock out. Claimant believed the edits were suspicious.

Claimant was discharged on May 24, 2016. The employer discharged claimant because she was aware that an employee was sneaking out without clocking out, but did not bring it to Ms. Nourse's attention when she submitted the payroll. Claimant also did not bring it to Ms. Nourse's attention until Ms. Nourse audited the payroll. Ms. Nourse testified that had claimant reported the suspicious edits on May 2, 2016, Ms. Nourse would have reviewed the video prior to the payroll checks being issued on May 7, 2016 and the necessary adjustments would have been made.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a

witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit submitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has a duty to make sure employees are getting paid for time that they work and not to pay employees for time that they are not at work. The employer has policies and has issued memos to ensure that an employee's time is accurately reported and submitted. Employer Exhibit One. Claimant was responsible for any edits or corrections on the time submitted for her store. Claimant was aware that during the pay period for April 17, 2016 to April 30, 2016, an employee (Darcy) would leave without clocking out and then request an edit. Darcy requested edits for eight of her ten shifts during that pay period. Although claimant wrote down the dates and times so she could investigate the edits (review surveillance video), she failed to investigate the incident over the next two weeks. Claimant also failed to notify her supervisor, Ms. Nourse, about the suspicious edits. Claimant's failure to investigate or notify her supervisor allowed Darcy to get paid for extra time she did not work.

Ms. Nourse only found out about the edits when she was auditing claimant's store on May 17, 2016. Claimant only notified Ms. Nourse about the dates and times she wrote down because Ms. Nourse asked claimant about the edits. By the time Ms. Nourse discovered the edits during the audits, Darcy had already been paid. During Ms. Nourse's investigation, it was discovered that there was a three hour and fifty minute misreporting for Darcy's time. Claimant also never disciplined Darcy for failing to follow the clock out procedures.

The employer has presented substantial and credible evidence that claimant continually edited an employee's time worked without reviewing security video or reporting it to Ms. Nourse, despite knowing that the edits were suspicious, in violation of the employer's policies. Claimant's conduct was clearly against the best interests of the employer. This is disqualifying misconduct, even without a prior warning.

DECISION:

The July 1, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs