

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JODY KIRBY**  
Claimant

**HILLCREST FAMILY SERVICES**  
Employer

**APPEAL 21A-UI-20581-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/01/21  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the September 15, 2021 (reference 02) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon the claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on November 8, 2021. The claimant participated personally and was represented by Emilie Roth Richardson. The employer participated through witness Chelsea Greene and was represented by Kacy Glaherty-Tarpey. Claimant's Exhibit A was admitted. Employer's Exhibits 1, 2, and 3 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**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 beginning on December 22, 2005. She worked full-time as an adoption social worker and dedicated some of her hours each week to human resources tasks. Her direct supervisors were Robin Shelby and Chelsea Greene. Claimant's last day physically worked on the job was August 4, 2021. She was discharged from employment by Ms. Greene on August 4, 2021.

On July 29, 2021, it came to the employer's attention that the claimant had posted a picture of her kayaking with a friend on Facebook. See Claimant's Exhibit A and Employer's Exhibit 1. On July 29, 2021, the claimant failed to clock out on her timecard for the day. The employer believed that the claimant was kayaking that day while purporting to be working. The claimant was not kayaking on July 29, 2021.

On Monday, August 2, 2021, the claimant's next working day, she submitted a request to her supervisor to note on her timesheet that she clocked out at 5:00 p.m. on July 29, 2021. Claimant then realized that she made an error and notified Ms. Shelby to change her timecard to end at 3:00 p.m. with two hours of paid time off (PTO) from 3:00 p.m. to 5:00 p.m. for July 29,

2021. Ms. Shelby made the changes to include two hours of approved PTO and submitted the timecard for approval.

At some point on August 2, 2021, the claimant received an email from Ms. Greene about her working hours for July 28, 2021. Claimant responded to Ms. Greene's inquiry with what she was doing for her job duties on July 28, 2021 and included stating that she was working on human resources tasks until 2:35 p.m. No further correspondence regarding the July 28, 2021 time was made by either party.

Upon reviewing video footage, Ms. Greene observed the claimant leaving the office premises at 12:47 p.m. on July 28, 2021. Claimant had informed Ms. Greene that she was working on human resources email correspondence and other human resources tasks until 2:35 p.m. that day, so Ms. Greene believed that the claimant was falsifying her timecard for July 28, 2021. Claimant was scheduled to have a 3:00 p.m. adoption meeting in Farley, Iowa on July 28, 2021, which she did attend. The claimant drove to her residence from the office premises first to switch cars before she drove to Farley, Iowa.

During the August 4, 2021 discharge meeting, claimant was never informed that her discharge was due, in part, to her timecard hours for July 29, 2021. Claimant was never asked about her leaving the premises at 12:47 p.m. on July 28, 2021 or given an opportunity to review the video footage that Ms. Greene had reviewed. No video footage was provided by the employer for the appeal hearing.

Claimant was required to track her job duties between her human resources role and her adoption social worker role separately. She imputed these hours into a computer tracking system. There were times where she did not immediately type in her hours but went back into the system to report which hours were for what projects. Claimant was never disciplined for inputting her hours this way.

Claimant was also allowed to work remotely from home. The employer did not implement any requirement that she work a specific number of hours in the office versus from home. She was only required to track her job duties on her calendar, which notified her supervisors whether she would be in the office or working remotely. Claimant was never informed that she was required to request and be granted permission to work from home each time that she wanted to work from home. Claimant was never instructed that her commuting time was not to be compensated time. Claimant's job duties as an adoption social worker required her to travel and meet with families on many occasions. The employer failed to submit at the hearing any written policies that were in place for the claimant to follow. Claimant had not received any previous discipline during the course of her employment prior to her discharge.

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

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

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) 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 cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job-related 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *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).

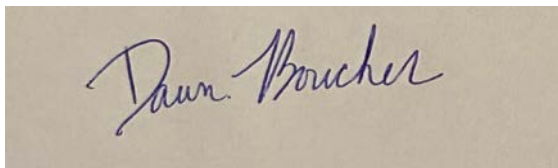
In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, 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 her own common sense and experience, the administrative law judge finds that the claimant's testimony that she did not falsify her timecard to be credible. Claimant was allowed to work remotely with no written requirements that she follow any policy for submitting her work on a daily basis or otherwise. She simply was required to keep her calendar up to date; which notified her supervisors whether she was working remotely, in the office, or traveling off site for visits.

Claimant was allowed to use paid time off on July 29, 2021 in the afternoon and was not required to have the time off approved ahead of time. Claimant was not kayaking while working. Claimant explained to Ms. Greene that she worked on human resources tasks until 2:35 p.m. on July 28, 2021. She was not required to work on these tasks in the office and was allowed to work remotely from home. Claimant received no written policies or previous discipline regarding requirements of her working remotely, in the office, or while working off site to attend meetings.

If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer has failed to establish any intentional and substantial disregard of the employer's interest which rises to the level of willful misconduct. As such, the separation from employment is not disqualifying and benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The September 15, 2021 (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant remains otherwise eligible.



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Dawn Boucher  
Administrative Law Judge

December 8, 2021  
Decision Dated and Mailed

db/scn