

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWANDA D WRIGHT
Claimant

APPEAL NO. 16A-UI-10172-S1

**ADMINISTRATIVE LAW JUDGE
DECISION**

OCI CEDAR RAPIDS LLC
Employer

OC: 08/21/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lawanda Wright (claimant) appealed a representative's September 12, 2016, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with OCI Cedar Rapids (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for December 7, 2016, in Cedar Rapids, Iowa. The claimant was represented by Thomas Currie, Attorney at Law, and participated personally. Alison Manning observed the hearing. The employer participated by Carrie Ewart, Regional Manager, and Tonya Beebe, General Manager. The employer offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 7, 2007, as a full-time executive housekeeper. The claimant signed for receipt of the employer's handbook on November 7, 2007. During her almost nine years of employment, the employer did not issue her any warnings. One of the employees, Emily, was not happy with the claimant. Emily requested that she not work any weekends. The claimant spoke to the claimant's supervisor who denied the request. The claimant communicated the denial to Emily.

On August 19, 2016, six housekeepers were working for the claimant. Usually her employees completed their tasks within five hours of starting the shift. On August 19, 2016, the work was taking longer to complete. The claimant understood that her workers needed to clock out and take a lunch break for thirty minutes. She told each of the six workers to punch out for lunch. The claimant had given this instruction to her workers previously. They knew to take a break and punch back in to finish the job because she had given this instruction before and they had always clocked in to finish the work.

On August 19, 2016, Emily reported to the employer that the claimant told her and others to work off the clock. She said the claimant told them to punch out at 2:30 p.m. and keep working. Three other employees told the employer they punched out at 2:30 p.m. on August 19, 2016, and kept working off the clock. Two employees did not say the same thing as the other four. The regional manager contacted the employer. The employer told the regional manager to suspend the claimant.

The claimant was not scheduled to work on August 20, 21, 22 and 23, 2016. On August 24, 2016, the claimant returned to work and the general manager asked the claimant about the situation. The claimant said she told the workers to clock out for break. They knew to return to work after the break. The claimant told the general manager that she knew her better than this. The general manager suspended the claimant. On August 25, 2016, the employer terminated the claimant for telling employees to punch out and continue working.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer did not offer the witnesses or their statements at the hearing. It seems that both sides would agree that the claimant told the employees to clock out for break and to continue working. The fact that is missing is that the employees knew to keep working after the break. The witnesses were not available to question. The claimant was the only witness at the hearing with firsthand knowledge of the conversation between herself and the subordinates. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's September 12, 2016, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs