

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER L MARTIN
Claimant

GENESIS HEALTH SYSTEM
Employer

APPEAL 21A-UI-09083-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/07/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On March 31, 2021, claimant, Heather L. Martin, filed an appeal from the March 23, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that the employer, Genesis Health System, discharged her for violation of a known company rule. The parties were properly notified about the hearing held by telephone on June 1, 2021. The claimant participated personally. The employer participated through HR Director Renee Stolmeier. Angela Geistkemper also participated as an employer witness.

ISSUE:

Did the employer discharge the claimant for job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a clinical office secretary beginning on July 21, 2014, and was separated from employment on February 5, 2021, when she was discharged.

On January 28, 2021, claimant left the employer's campus for a period of time without clocking out. The employer maintains a policy that dictates that employees may not leave campus without clocking out. This includes leaving campus for even a very short period of time. Claimant knew of the policy. She informed her manager, Angela Pearson, before she left on January 28, 2021, and she informed her when she returned. She told Pearson where she was going—to take her car in for repairs. She also stated that Pearson knew claimant had not clocked out because she accidentally left her badge on her desk when she left the building. Claimant also left through a door she does not normally use, which is not as near a station to clock out as other doors on campus. She used this door because one of her coworkers was going with her to bring her back to work after dropping her car off.

In the past, claimant had forgotten her badge. On those occasions, she had begun work, and later informed Pearson of her arrival time. Pearson would change her time card to accurately reflect claimant's arrival time for the day. Claimant believed the same would happen in this situation. She believed Pearson would alter her time card to reflect the period during which she

had been away from work. Pearson did not do so, though. It is the employees' responsibility to make sure their time is accurately reflected on their time card.

On February 3, 2021, another employee alerted Stolmeier that claimant had left campus without clocking out. Stolmeier reviewed the surveillance video footage and confirmed the report. She met with claimant and Pearson on February 5, 2021, and inquired with claimant about the incident. Claimant admitted to leaving campus without clocking out. Stolmeier terminated claimant's employment based on time card falsification.

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.

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 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). 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). 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).

The claimant has argued she did not knowingly violate the employer's policy because she believed leaving for a period of time mid-shift to be similar to forgetting her badge, in that Pearson would alter her time card to reflect the correct information. It is the duty of the administrative law judge as 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 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. *Id.* 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 the employer's version of events to be more credible than claimant's recollections. Claimant alleges that she expected Pearson to correct her time card, but does not allege that she made a clear request regarding that expectation to Pearson. Accordingly, her assertions placing the onus of responsibility on Pearson are not credible. She also likened the conduct to forgetting her badge and coming to work without clocking in initially. However, this conduct is different because claimant was not working without being clocked in, she was off campus for personal reasons while still being on the clock. The two instances are simply not comparable. Finally, claimant admitted that she knew about the employer's policy requiring that employees clock out before leaving campus, but she failed to do so.

Claimant's actions violated the standards of behavior that an employer has a right to expect from its employees. Despite knowing of the employer's policy, claimant left campus and failed to clock out, effectively receiving pay for time in which she was not working. This is misconduct even without prior warning. Benefits are denied.

DECISION:

The March 23, 2021, (reference 01) unemployment insurance decision is affirmed. The 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.



Alexis D. Rowe
Administrative Law Judge

June 16, 2021
Decision Dated and Mailed

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