

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRENDA A GINES
Claimant

SCOTTISH RITE PARK INC
Employer

APPEAL 15A-UI-00347-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/14/14
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the January 6, 2015 (reference 01) unemployment insurance decision that allowed benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on February 3, 2015. The claimant participated. The employer participated through Teresa Phillips.

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: The claimant was employed full time as a dietary aide and was separated from employment on July 14, 2014 when she was discharged.

The employer discharged the claimant for taking unauthorized breaks while still clocked in for work. The employer considers this to be "time theft". The claimant worked generally from 11:00 a.m. to 7:00 p.m. and the employer would allow her a 30-minute lunch break and a 15-minute break. On July 10, 2014 the claimant clocked out at 1:14pm and clocked back in at 1:20 p.m. The claimant testified she was going to lunch and realized she had to return to the kitchen for something. The employer testified video showed the claimant then leaving the premises from 1:25 p.m. and returning at 1:38 p.m. while remaining clocked in. Video footage purportedly also showed the claimant leaving the premises from 3:33 p.m. to 4:15 p.m. without clocking out. There was no work-related function that would require the claimant to leave the premises during the time so the employer discharged the claimant for time theft as a result of the unauthorized breaks while still clocked in. The claimant adamantly denied ever taking unauthorized breaks or unintentionally remaining clocked in during her break or lunch times. Prior to the claimant's separation, the claimant had been given a warning for theft of alcohol. The employer had elected to not discharge the claimant for this incident because she was a good employee.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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, (4) 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).

(4) Report required. The claimant's statement and the 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.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). The claimant denied intentionally taking breaks or lunch while on the clock. The employer believed the claimant's actions were willful based on video footage but failed to show the claimant its evidence at the time of her separation, or produce the video footage for the hearing. Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

An employer can reasonably expect that an employee will be working when clocked in and being paid. While the claimant may have violated a work rule, the employer has failed to prove that the violation was intentional or the claimant made some effort to "steal time" from the employer. Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating this work rule. The employer had a right to follow its work rule. The analysis of unemployment insurance eligibility however, does not end there. This ruling simply holds that the claimant did not have the requisite level of intent or negligence for her conduct to qualify as misconduct under Iowa law. The employer has not met its burden of proof and benefits are allowed.

DECISION:

The January 6, 2015 (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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