

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

CYNTHIA A MANZER

Claimant

and

CONIFER REVENUE CYCLE SOLUTIONS

Employer

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HEARING NUMBER: 17BUI-04523

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2A, 96.3-7

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Cynthia A. Manzer, worked for Conifer Revenue Cycle Solutions from October 12, 2000 through March 30, 2017 as a full-time patient access representative 3. (8:23-9:15; 17:05-17:25) Ms. Manzer's regular hours were from 5:45 a.m. until noon, Monday through Friday. (20:30-20:50) The Claimant records her time on an electronic timesheet, which she accesses online. If she mistakenly misses a 'punch', she can submit a request to adjust her timesheet via a template on her computer that she usually turns in at the end of a given pay period. (18:46-19:08) The Employer frowned upon employees going over their FTE hours (35:20-35:26); so in an effort to maintain her regular full-time hours, the Claimant sometimes came in later one day when she had to stay past the end of her shift on another day. This was not an uncommon practice for the Claimant to compensate for her time so as not to go over her FTE hours and have to suffer consequences for doing so. (35:26; 35:53-36:05) She had compensated this way throughout her

employment with Conifer, and adjusted her timesheet accordingly, without incident.

The Claimant met her new supervisor, LuRae Croshaw, during a "Meet & Greet" on December 2, 2016. During this event, Ms. Croshaw informed Ms. Manzer that she was making changes the Claimant was not going to like. (37:52-38:00) From that point forward, the Claimant received e-mails from Ms. Croshaw that were 'snarky' and 'stabbing', which prompted the Claimant to voice her concerns to Ms. Croshaw's superior on February 21st and March 21st, 2017. (38:26-38:44) Ms. Manzer also complained to her supervisor about connectivity issues with the front door and her intermittent inability to swipe her badge to unlock the door to gain access into the clinic. (34:29-34:54) Sometimes the door would be unlocked, which posed a security issue; and other times, the Claimant would have to gain access by using her key, which delayed her clock-in times.

On February 22nd, the Claimant punched out early at 11:29 a.m. because she had a meeting after work the following Monday. (35:30-35:50) On March 6th, the Claimant stayed late for an hour and a half for a meeting and came in later on another day. (35:13-35:26)

On March 16, 2017, Ms. Manzer submitted two time sheet correction forms to Ms. Croshaw to correct her time on March 8 and 10, 2017. However, she forgot to change the time reflect the actual times she reported to work on those days; she could not recall what happened on those days to distract her from making the corrections. (36:30-37:27) Both forms indicated a start time of 5:45 a.m.; and the March 10, 2017 form included a comment that there was no icon on her computer, which forced the Claimant to shut down and reboot. The company records show the Claimant swiped her badge and entered the building at 6:18 a.m. on March 10, 2017. (21:07-21:40) On March 8, 2017, company records show she swiped her badge and entered the building at 6:34 a.m. Further investigation showed the Claimant entered the building later than her time sheet correction forms reflected on two other occasions in 2017. An investigation ensued and was completed on March 30, 2017. Ms. Croshaw never told the Claimant which days she incorrectly recorded her time. (19:20-20:15; 20:58-21:00) The Employer terminated the Claimant for time card fraud. (9:30-10:40; 27:35-27:55) The Employer had never issued any warnings to her for any disciplinary actions (16:25-16:35; 18:15-18:18); nor had Ms. Manzer ever been issued a personnel handbook. (18:25)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The Claimant was a long-term employee (17 years) whom both parties agree had no prior history of discipline during her tenure outside of these last incidents. Based on this fact, we find her testimony regarding the manner in which she managed and recorded her time credible, as she had never been told that her timekeeping was problematic. The fact that Ms. Croshaw told her there were going to be changes is not determinative that those changes involved the Claimant's timekeeping methods. The Employer did not refute her testimony; nor did the Employer offer any evidence to establish that Ms. Manzer was ever warned that her way was no longer tolerable.

Her testimony that she simply forgot to alter her timecard on the last two occasions pursuant to her adjustment request was credible. She didn't realize her error until it was pointed out to her on the day she was terminated, which was nearly two weeks later. The Claimant had no idea that her job was in jeopardy until the very end. It was not wholly implausible for the Claimant to have no recollection of how she missed changing those times given any number of distractions a person encounters during the course of their work on any given day. The fact that she and Ms. Croshaw seemed to have a somewhat strained relationship since she started in December, coupled with the Claimant recent complaints about her, may have given way to the Employer's more stringent view of the Claimant's timecard discrepancies. Be that as it may, we find the Claimant's failure to accurately record her time were good faith errors in judgment that didn't rise to the legal definition of misconduct. For this reason, we conclude that the Employer failed to satisfy their burden of proof.

DECISION:

The administrative law judge's decision dated May 18, 2017 is **REVERSED**. The Claimant was discharged for no disqualifying reasons. Accordingly, she is allowed benefits provided she is otherwise eligible.

Kim D. Schmett

James M. Strohman

DISSENTING OPINION OF ASHLEY R. KOOPMANS:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the administrative law judge's decision in its entirety.

Ashley R. Koopmans

The Claimant submitted additional evidence to the Board which was not contained in the administrative file and which was not submitted to the administrative law judge. While the additional evidence was reviewed for the purposes of determining whether admission of the evidence was warranted despite it not being presented at hearing, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision. There is no sufficient cause why the new and additional information submitted by the Claimant was not presented at hearing. Accordingly all the new and additional information submitted has not been relied upon in making our decision, and has received no weight whatsoever, but rather has been wholly disregarded.

Kim D. Schmett

Ashley R. Koopmans
