

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CINDY K LAMPHIER**  
Claimant

**APPEAL 16A-UI-05247-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR RAPIDS COMMUNITY SCHOOL  
DISTRICT**  
Employer

**OC: 04/10/16  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 4, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on May 20, 2016 and continued for a second hearing on May 24, 2016, to allow the claimant to receive the employer's proposed exhibits. The claimant participated personally. The employer participated through Sue Wilber, lead human resources specialist. Employer Exhibits 1 through 17 were admitted. The administrative law judge took official notice of the administrative record, including fact-finding documents. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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 bus attendant and was separated from employment on March 30, 2016, when she was discharged for falsification of time cards and dishonesty during the investigation (Employer Exhibit 16).

At the time of employment and during employment, the claimant received access to the employer's policies and procedures which outline an expectation of honesty and integrity, including in the recording of time worked (Employer Exhibit 14). In order to clock in, an employee would enter their personal pin number and although the employer technically had a fingerprint option that was supposed to check the identity of the person entering the pin, it did not work.

The claimant and her husband both were employees for this employer. While both employees began work at 6:30 a.m., her husband would go to work early to secure a good parking spot. The claimant had shared her pin number with her husband. On March 24, 2016, video

surveillance showed the claimant walking into the building at 6:36 a.m. Further the door required the claimant to swipe her personal badge and it confirmed she entered the building at 6:36 a.m. However, it was reported by two employees that the claimant's husband clocked himself in, and then later returned to the time card machine and clocked the claimant in at 6:31 a.m (Employer Exhibits 5 and 6). Mr. Lamphier did not attend the hearing but reportedly admitted to clocking his wife in when questioned and did so at her request, before he resigned from employment the next day. By clocking the claimant in at 6:31 a.m. rather than her arrival time, her tardy was concealed.

The claimant was questioned on two separate occasions and denied requesting her husband clock her in. The employer reported it asked her three times during the first meeting to give her an opportunity to "come clean" because it would have likely resulted in her being disciplined and not discharged. However, the claimant has maintained she clocked herself in, not her husband, and that she did not advise or know her husband had clocked her in to cover her tardy. She was subsequently discharged.

### **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.

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.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

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 has met its burden of proof to establish the claimant was discharged for disqualifying misconduct. While the employer did not present Mr. Lamphier to provide sworn testimony or submit to cross-examination, the combination of employer's written statements (Employer Exhibit 5 and 6) and Ms. Wilbur's testimony, when compared to claimant's recollection of the event, establish the employer's evidence as credible.

In this case, the claimant was discharged after an incident of someone clocking in for her, (her husband, who also happened to be an employee) and for her failure to be honest during the investigative meeting. The claimant shared her pin number with her husband, which in itself is concerning, given that it is intended to be private. Further, the administrative law judge is not persuaded that the claimant was unaware that her husband clocked her in when she was running late on March 24, 2016, or alternately, that she did not direct him to clock her in. The claimant's actions were dishonest inasmuch the claimant was clocked in for time not actually worked. The employer has a right to expect honesty and integrity from its employee's not false, misleading statements. This is a violation of the duties and responsibilities the employer has the right to expect of an employee. The claimant knew or should have known her conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer has a right to expect of its employees. Benefits are withheld.

**DECISION:**

The May 4, 2016, (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.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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