

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA R SHREVE
Claimant

APPEAL 19A-UI-10271-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 11/10/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On December 26, 2019, Amanda R. Shreve (claimant) filed an appeal from the December 23, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination REM Iowa Community Services, Inc. (employer) discharged her for dishonesty in connection with her work. The parties were properly notified about the hearing. A telephone hearing began on January 22 and concluded January 29, 2020. The hearing was consolidated with the hearing for appeal 20A-UI-00729-SC-T. The claimant participated personally. The employer participated through Program Directors Kalie Moore and Antwan Harper and represented by Toni McColl, Hearing Representative from ADP. The Claimant's Exhibits A through G and the Employer's Exhibits 1 through 7 were admitted into the record.

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 Program Supervisor beginning on February 19, 2018, and was separated from employment on November 15, 2019, when she was discharged. The employer utilizes timekeeping system called Kronos. Employees who work at remote worksites where the residents live are required to call the Kronos system from the house telephone to record their start and end times. This system ensures employees are actually at the worksite while being paid and properly records hours so services can be billed to the residents. If an employee forgets to record their time or if time is worked outside of the house, those time adjustments are recorded on a green sheet and submitted for the supervisor to make those corrections in Kronos. The employer's policies state any hours claimed and not worked is considered documentation falsification and can result in discharge.

On October 28, 2019, Kalie Moore, Program Director, discovered that the claimant was occasionally using her cell phone to record her start time in Kronos instead of the house phone, which meant the employer had no verification she was actually at the work location when recording her time. Moore gave the claimant a verbal warning and directed her that she was not

to use her cell phone to record time. She also counseled the claimant that any time spent working that was not at the home or office was to be recorded on the green sheet and submitted for approval.

On November 12, the claimant spoke to Moore at 8:17 a.m. The claimant said she needed to take her daughter to school and then would report to her worksite. Later that day, Moore reviewed the claimant's time tracking in Kronos. She discovered the claimant had manually entered her start time into the Kronos system as 8:15 a.m. that day. She also discovered that in the last two months, the claimant had altered her own timesheet in Kronos a total of 120 times.

Moore conducted fact-finding interviews with the claimant, other employees at the worksite, and the residents. The other employees and residents reported that the claimant arrived to the worksite at 9:00 a.m. on November 12. The claimant reported someone else must have changed her timecard, but did not identify a specific person who would have access to her login information. Moore conduct another fact-finding interview with other program supervisors and all denied having the claimant's Kronos login information. The claimant was discharged for falsification of documents.

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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 the 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events. While the claimant denies changing her time records, the documents reflect that it was her login used to change the records. The claimant's contention that another employee made the changes in retaliation for a complaint filed against them is not persuasive. The complaint was made approximately five days before the final incident to an outside company and the claimant does not believe the employees had notice of the complaint. Additionally, based on the documents, the changes to the claimant's time sheets had been occurring long before the complaints about other employees were made.

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has an interest in maintaining correct time records to ensure employees are being paid for time worked and to ensure proper billing for the services to the residents. The claimant falsified her time records in violation of the employer's policy and in deliberate disregard of the employer's interests. The claimant's conduct is disqualifying even without prior warning. Benefits are denied.

DECISION:

The December 23, 2019, 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.



Stephanie R. Callahan
Administrative Law Judge

February 4, 2020
Decision Dated and Mailed

src/scn