

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

VERONICA K STOREY
Claimant

APPEAL NO. 10A-UI-14518-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER
Employer

OC: 09/12/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 15, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 10, 2010. The claimant participated. Although the employer responded to the hearing notice and provided the name and number of a representative, when that number was dialed, voice mail picked up. A message was left on how to participate in the hearing. No one from the employer called during the hearing. The record consists of the testimony of Veronica Storey.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a full-time registrar for the employer. She was hired in March 2010. She was discharged for falsification of time cards on September 15, 2010.

The claimant was late for work on September 14, 2010. She did not look at the clock before she signed her time card. The time she wrote down was one or two minutes off in her favor. There was one other day when she made the same error. She does not recall when that incident occurred.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by the employee to the employer is honesty. An employer can reasonably expect that an employee will honestly report hours work on time cards. The employer has the burden of proof to show misconduct.

The employer did not participate in the hearing. There was no testimony or other evidence from the employer on the magnitude of the claimant's false reporting. The claimant acknowledged that she may have made an error on her time card on one or two occasions. She attributed this to not looking at the clock when she signed in. The administrative law judge has some reservations about the claimant's testimony but in absence of evidence from the employer, the claimant's actions appear to be negligence in an isolated instance as opposed to a deliberate act on her part. Since there is insufficient evidence of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 15, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw