

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUANITA M ELIASSEN
Claimant

HAWKEYE COMMUNITY COLLEGE
Employer

APPEAL 17A-UI-09120-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/06/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 23, 2017, (reference 01) unemployment insurance decision that denied benefits. A hearing was first scheduled for September 22, 2017 but continued at the claimant's request. The parties were properly notified about second hearing. A telephone hearing was held on October 5, 2017. The claimant participated personally. The employer participated through Janine Knapp, associate director of employee services. Erin Swancutt, manager of Waverly Center, also testified. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, 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 part-time as an administrative assistant and was separated from employment on July 19, 2017, when she was discharged for misrepresentation of her time cards and dishonesty.

The claimant also worked for another employer, FBG, who had a contract with this employer, to perform maintenance and custodial duties. The claimant therefore worked on the employer premises under two employers, in two different capacities. The claimant's schedule with this employer was set from 8:00 a.m. until 1:30 p.m., Monday through Friday. The claimant would record her time bi-weekly through a webtime entry, and submit it to her manager, Erin Swancutt, for approval. Before submitting her timecard, a pop up box would remind the claimant that by submitting her timecard, she was verifying it was accurate. In comparison to her employment at Hawkeye Community College, the claimant had some flexibility to perform her work with FBG so long as the duties were completed each week. FBG required the claimant to record her time by

way of calling a designated number upon arrival to the building she was cleaning, enter her identification code, and then again call when she completed her duties.

At the time of hire and throughout employment, the claimant received a copy of the employer rules and procedures, including its standards of conduct, which required honesty in all work dealings. The claimant's job duties for the college included helping students, accessing student records and proctoring exams. The decision to discharge the claimant was based on a single investigation. The final incident occurred when Ms. Swancutt discovered that the claimant was clocking in and out of her employment at FBG during the same period of time she was clocked in at Hawkeye Community College, based upon call history which displayed the claimant's repeated calls to the designated phone number for FBG.

The employer initiated an investigation of the claimant's timekeeping and contacted FBG for assistance. The employer then compared the claimant's clock in/out times for both employers from the period of April 2017 until separation and saw a pattern of the claimant being clocked in for both employers. The employer cited to three specific incidents including

April 3, 2017	<u>Hawkeye Community College:</u> 7:45 a.m. to 2:30 p.m.	<u>FBG</u> 12:55 p.m. to 2:59 p.m.
July 3, 2017	<u>Hawkeye Community College:</u> 7:45 a.m. to 2:45 p.m.	<u>FBG:</u> 12:43 p.m. to 2:42 p.m.
July 10, 2017	<u>Hawkeye Community College:</u> 8:00 a.m. to 1:30 p.m.	<u>FBG:</u> 11:33 a.m. to 1:38 p.m.

The employer opined the claimant was not being truthful in her timekeeping to at least one of the employers, since she was requesting pay from two employers for the same period of time. There was disputed evidence as to whether the claimant also was performing duties for FBG, such as filling nail holes, cleaning bathrooms, and removing trash, while clocked in for this employer. She was subsequently discharged.

The claimant denied ever performing job duties with FBG while clocked in for Hawkeye Community College. The claimant admitted her times recorded at FBG did not correspond to the time actual work was performed but that she would clock in while seated at her desk as an administrative assistant and clock out so she would not forget. She stated she would keep notes of the times on paper to accurately record the minutes worked for FBG, even if it wasn't at the exact times she performed the work. If the claimant was performing her job duties for this employer and then went directly to her duties for FBG, she would be required to go to a supply closet first, to retrieve her supplies, thereby breaking up the periods of employment.

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 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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The employer’s reasonable policies and standard of conduct require an employee accurately report time worked and the claimant was aware of the policies. Further, each time the claimant would submit a timecard, she would receive a pop-up message attesting to her timecard being accurate. In this case, the claimant misrepresented her hours worked, by clocking in for this employer and a subsequent employer simultaneously. By doing so, she represented that she was performing work (and being paid) at the same time as both an administrative assistant and as a cleaner. The claimant knew she was unable to perform both jobs at the same time. The administrative law judge was not persuaded by the claimant’s argument that she clocked in and out for FBG while performing her job duties for the college so she would not forget. Given that the claimant had to physically go to a supply closet to retrieve her supplies to do her job at FBG, there was a clean delineation of job duties, and opportunity to accurately call in her start time at FBG. It cannot be ignored that the claimant worked for an educational institution, where trust and honesty are integral, given her responsibilities, which included proctoring exams and access to student records.

Even if the claimant’s position is accepted, that she did not perform work for FBG while clocked in for this employer, Hawkeye Community College, she displayed a pattern of dishonesty by trying to be paid for two employers at the same time. Honesty is a reasonable, commonly accepted duty owed to the employer. The administrative law judge is persuaded the claimant knew or should have known her conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for dishonest/misrepresentation of her timecards, which would constitute misconduct. Benefits are withheld.

DECISION:

The August 23, 2017, (reference 01) 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed
jlb/scn