

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER L MASON
Claimant

**MARSHALLTOWN MEDICAL/SURGICAL
CENTER**
Employer

APPEAL 15A-UI-04568-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 10, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. Telephone hearings were held on . The claimant participated with Melissa Nine, Attorney at Law. Tabitha Jordan also testified for the claimant. The employer participated through Paula Wantiez. Employer witnesses included Julie Allemagne, Human Resources Director, John Hughes, and Jalyn George. Employer Exhibits One, Two, and Seven were received.

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 director food and nutritional services and was separated from employment on March 30, 2015, when she was discharged (Employer Exhibit One).

The claimant was a director and had a coordinator, Kelli Hellberg, who helped manage their team of 45 employees, including part time employees and high school students. These employees were required to clock out when off premises or on breaks. Ms. Hellberg was delegated the responsibility for handling their time keeping cards for approval. The claimant had conducted meetings and posted signs about timekeeping but did not perform audits or check Ms. Hellberg's work. The employer learned that employees were running errands by request of Ms. Hellberg, and performing personal errands for her, including transporting her children, while clocked in for the employer. The employer also believed the claimant was aware and participating in this conduct. The claimant asked an employee to transport her to a doctor's appointment once when she had no vehicle and was unaware the employee had not clocked out. The employer conducted extensive interviews and ultimately discharged the claimant and Ms. Hellberg for allowing and asking employees to run personal errands off the premises without recording their time accurately.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

It is understandable that the claimant as the director was ultimately responsible for her department. However, the employer's broad assertion that the claimant was ultimately responsible for any policy violation of any subordinate does not substantiate the claimant's actions were disqualifying job related misconduct under Iowa law.

The claimant discharged the claimant for violating its policy #323 which includes falsifying a work, patient or employment record. The claimant herself never falsified a document. The credible evidence establishes that the claimant's coordinator, Kelly Hellberg, most likely allowed and possibly encouraged the hourly employees to perform errands including picking up her children, without clocking out. However, Ms. Hellberg had been delegated to handle the time card responsibilities and no evidence was presented that the claimant was ever instructed or disciplined for her own failure as a director to audit the team's timecards or records. On the contrary, the claimant offered evidence that supported she encouraged her team to follow the timekeeping policies through signs and follow up meetings, reminding them to clock out per protocol.

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 not satisfied its burden to establish by a preponderance of the evidence that the claimant was in fact aiding in or

falsifying time cards or other work records. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

DECISION:

The April 10, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/mak