

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LINDSAY M VICKROY

Claimant

APPEAL 16A-UI-07308-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST

Employer

OC: 06/05/16

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 24, 2016, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 21, 2016. Claimant participated. Employer participated through benefits specialist Rhonda Wagoner and success support specialist Jennifer Stalder. Employer's Exhibits 1 through 4 were received. Claimant's Exhibits A and B 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: Claimant began working for employer as a full-time success case manager on August 20, 2012. Claimant's work hours were 7:25 a.m. until 3:10 p.m. year round. Claimant was terminated on June 9, 2016.

As a success case manager, claimant often worked in the community with students and families. Employer requires success case managers to sign in and out of the building to reflect their time out in the community. Claimant was aware of this requirement.

As a success case manager, claimant was required to report all time she was absent on employer's NOVA time system. Claimant was also required to make her supervisor, Jennifer Stalder, aware of any absences. Claimant was aware of this requirement.

On May 16, 2016, multiple staff members reported to success support specialist Jennifer Stalder that claimant was often not present at work during work hours. Stalder began investigating the situation by checking the NOVA time system and the sign-out log and comparing it with claimant's presence at work. Stalder documented claimant's whereabouts for two weeks.

On May 17, 2016, claimant left work at 1:00 p.m. Claimant did not sign out when she left the building, did not enter her absence in the NOVA system, and did not notify Stalder that she was absent from work. Claimant did not return to the building that day.

On May 20, 2016, claimant left work at 1:30 p.m. Claimant left work early to care for her father. Claimant did not sign out when she left the building, did not enter her absence in the NOVA system, and did not notify Stalder that she was absent from work. Claimant did not return to the building that day.

On May 26, 2016, claimant left work at 2:30 p.m. Claimant did not sign out when she left the building, did not enter her absence in the NOVA system, and did not notify Stalder that she was absent from work. Claimant did not return to the building that day.

Claimant did not attend work on May 27, 2016. Claimant did not enter her absence in the NOVA system and made no attempt to notify Stalder of her absence.

On May 31, 2016, claimant left work at 2:30 p.m. Claimant did not sign out when she left the building, did not enter her absence in the NOVA system, and did not notify Stalder that she was absent from work. Claimant did not return to the building that day.

On June 1, 2016, claimant left work at 12:00 p.m. Claimant left work early to care for her father. Claimant did not sign out when she left the building, did not enter her absence in the NOVA system, and did not notify Stalder that she was absent from work. Claimant did not return to the building that day.

On June 2, 2016, claimant left work at 12:00 p.m. Claimant did not sign out when she left the building, did not enter her absence in the NOVA system, and did not notify Stalder that she was absent from work. Claimant did not return to the building that day.

On June 3, 2016, claimant left work at 10:40 a.m. Claimant left work early because she was upset with her co-worker. Claimant did not sign out when she left the building, did not enter her absence in the NOVA system, and did not notify Stalder that she was absent from work. Claimant did not return to the building that day.

Stalder took the information she collected and presented it to the human resource department. Employer met with claimant on June 9, 2016, to discuss her absences. Claimant was not able to offer an explanation that justified her actions. Employer terminated her employment the same day.

Claimant had previously been warned about accurately accounting for her time.

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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Here, claimant was terminated for falsifying time records. Claimant was absent from work for a significant period of time during eight of the 14 days investigated by Stalder. Yet, claimant's time records reflected that she was present and working during all of those times. Claimant alleges that she was actually working outside of the building on three of those days, but forgot or was unable to complete the sign-out log. I do not find this testimony credible. Claimant

admits she was absent from work without approval and/or entering her absence in the NOVA time system on at least four occasions. Claimant admits she was aware her conduct was in violation of employer's policy.

Claimant's actions were in deliberate disregard of employer's interests in adequately serving its students and maintaining public trust in its ability to wisely use taxpayer funds. This is misconduct even without prior warning, although in this case claimant was previously counseled about accurately accounting for her time. Employer has established claimant was terminated for job-related misconduct.

Claimant's allegation that her co-worker was also late and took long lunches does not affect the outcome of this case. There is no indication Stalder was ever made aware of these allegations, and thus claimant could not have been treated disparately.

DECISION:

The June 24, 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 claimant is deemed eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/pjs