

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIFFANY J ROGERS
Claimant

GENESIS HEALTH SYSTEM
Employer

APPEAL 19A-UI-08343-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/06/19
Claimant: Appellant (2/R)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tiffany Rogers (claimant) appealed a representative's October 23, 2019 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Genesis Health Systems (employer) for dishonesty in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 14, 2019. The claimant participated personally. The employer participated by Megan Chadwick, Human Resources Coordinator, and Noreen Johnson, Supervisor of Home Health Aids and Homemakers.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 15, 2018, as a part-time home care aide two. She signed for receipt of the employer's handbook and policy manual on January 15, 2018. The employer did not issue her any warnings during her employment.

The claimant suffered a work injury and was placed on medical restrictions. Her job title changed to home health aide two to meet her accommodations. Her supervisor told her to prepare administrative packets from different offices or to transfer packets between offices. The claimant asked for a reduction in her hours after September 26, 2019, because she could not perform the work required in her original position or use her certification due to her work injury.

On September 12, 2019, the claimant worked in the Bettendorf, Iowa, office. She badged in at 8:33 a.m. and badged out when she left. She was unaware the system did not record her badge swipe. The claimant almost always left work at 1:00 p.m. About one week later when the claimant realized the system did not record her time, she asked her supervisor to enter her time leaving work as 1:00 p.m. because that is when she usually left work. The employer reviewed a video and discovered she left work at 12:50 p.m.

On September 13, 2019, the claimant started work and swiped her badge at the Bettendorf, Iowa, office. She clocked out of the Bettendorf, Iowa, office at 10:26 a.m. She traveled to the

Rock Island, Illinois, office for work. At the end of her shift, the claimant clocked out on her cellphone at 11:32 a.m.

On September 18, 2019, the claimant started work and swiped her badge at the Bettendorf, Iowa, office. She left the Bettendorf, Iowa, office at 10:50 a.m. and traveled to the Rock Island, Illinois, office for work. When she finished her work, she clocked out on her cellphone using the employer's system at 12:03 p.m.

On September 26, 2019, the claimant worked in the Bettendorf, Iowa, office. She badged in at 8:30 a.m. for a training course. The claimant did not badge out and recorded her time out at 12:30 p.m. The claimant was not scheduled for work from September 27, 2019, to October 10, 2019. On September 27, 2019, the claimant called her supervisor and said she accidentally put 12:30 p.m. as her time out but meant to put 11:30 a.m. The claimant asked the supervisor to change her time for her.

On October 9, 2019, the employer met with the claimant and terminated her for falsification of her time card without asking the claimant to participate in an investigation. The employer said she falsified her card on September 12, 2019, when she left at 12:50 p.m. and told her supervisor she left at 1:00 p.m. It said she falsified her card on September 13, 2019, when she left at 10:26 a.m. and clocked out at 11:32 a.m. The employer said she falsified her card on September 18, 2019, when she left at 10:50 a.m. and clocked out at 12:03 p.m. It said she falsified her card on September 26, 2019, when she entered 12:30 p.m. as the end of her shift and really left at 12:07 p.m.

On or about October 10, 2019, the claimant provided the employer with information reminding it that she was assigned to another building on September 13 and 18, 2019. She reminded her supervisor that she requested a change in her time to 11:30 a.m. on September 26, 2019. The claimant reminded the employer that it was a week after September 12, 2019, when she turned in her exit time for the day. The employer admitted that it had misinformation about September 13, 18, and 26, 2019, and her time was entered correctly. It would not rescind her termination and terminated the claimant based on the September 12, 2019, incident alone.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for 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).

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). 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).

In this case, the employer provided one incident of an incorrect time card entry on September 12, 2019. The claimant inadvertently entered one incorrect time. She did so because the distance between the date worked and the date the time was entered was remote and the overwhelming feeling that she usually left at 1:00 p.m. The employer did not show any wrongful intent on the claimant's part. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided she is otherwise eligible.

The issue of whether the claimant is able and available for work after her work injury is remanded for determination.

DECISION:

The representative's October 23, 2019, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed, provided she is otherwise eligible.

The issue of whether the claimant is able and available for work after her work injury is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn