

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA MOFFITT
Claimant

IOWA PHYSICIANS CLINIC MEDICAL
Employer

APPEAL 20A-UI-00551-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/08/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 8, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 4, 2020, at 3:00 p.m. Claimant participated. Employer did not participate. Claimant's Exhibits A – E were admitted.

ISSUE:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed as a full-time certified medical assistant from September 9, 2018 until her employment with Iowa Physicians Clinic ended on December 11, 2019. Claimant worked Monday through Friday. Claimant's direct supervisor was Julie Sersland, Clinic Supervisor.

On December 4, 2019, claimant was running late for work. Claimant texted her supervisor that she was running behind. Claimant arrived at work 11 minutes late. Claimant was flustered because she was late for a meeting. Claimant went directly into the meeting and did not clock-in. On December 9, 2019, employer asked claimant to do a missed time punch for that pay period. Claimant submitted the missed time punch for December 4, 2019 reflecting her scheduled start time and not her arrival time. On December 11, 2019, employer discharged claimant for falsification of her time card. Claimant had prior warnings for attendance and job performance. Claimant had no prior warnings regarding falsification of time cards or other employer records. Claimant had no prior warnings for failure to clock-in or clock-out. Claimant did not intentionally falsify her timecard.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct*. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). 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 Dep't of Job Serv.*, 351

N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

There is no evidence that claimant intentionally falsified her time card or that she willfully or wantonly disregarded another standard of behavior the employer had a right to expect of her. Claimant's error on the missed punch form was a mere inadvertency or ordinary negligence. Employer has not established a current act of misconduct that led to claimant's discharge. Without a current or final act of misconduct, the history of other incidents need not be examined. Furthermore, a warning for attendance or job performance is not similar to a warning for falsification of time cards; the simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits. Employer has not met its burden of proving disqualifying job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible

DECISION:

The January 8, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs