

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CODI PROESCH**  
Claimant

**GO DADDY SOFTWARE INC**  
Employer

**APPEAL NO. 17A-UI-06301-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/28/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 15, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 10, 2017. Claimant participated personally. Employer participated by Katherine Castillo. Employer's Exhibit 1 was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 9, 2017. Employer discharged claimant on May 30, 2017 because employer alleged that claimant had falsified his time records for three and a half months by filing time records and being paid for the period from February 3, 2017 through May 17, 2017 without claimant being at work. Claimant denied the allegations stating he was at work shadowing others throughout the time period.

Employer stated that claimant was determined, through a company audit, to have received pay throughout the months of February, March, April and into early May, 2017. During those months claimant had not logged in through his desk computer to show that he was at work. Claimant was found to have logged in through an internal system on January 9, 2017, the only time he'd logged in through the internal system until his date of job loss. Rather claimant had used an app that allowed him to log in from an outside device – whether it be a phone or an outside computer – to do his daily sign ins. Employer stated that claimant had not used his identification badge to enter the facility, as he was supposed to do, at all during this time period. According to company records, he'd only badged in on April 5, 2017. Claimant stated that he had used it on at least 30 occasions and employer was not correct in stating he hadn't been there. Additionally, employer stated that claimant was not seen by either the receptionist who would have been working had claimant entered the front door, nor by employer's witness for the three month time period. Employer stated that both of them would have seen claimant had he

been at work. Claimant stated that he was at work and that employer's testimony was dishonest.

### **REASONING AND CONCLUSIONS OF LAW:**

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*. There is no question that if it is deemed that claimant has not been at work for months while receiving pay and stating that he had been at work, said actions would amount to misconduct.

When looking at the conflicting testimony in this matter, the administrative law judge looks to what evidence was and could be provided to the court. Employer in this matter provided testimony that claimant was not at work on the dates mentioned. Employer's witness testified that she would have seen claimant had he been at work, but she didn't. Employer additionally testified that claimant was not seen by the receptionist at the office, nor was claimant on any of the videos viewed by employer. Additionally claimant was not included on any of the proper onsite logins required by employer nor was his identification badge used more than once over the last three months of employment.

Claimant did not call any witnesses to support his claim that he was at work every day, nor did he successfully refute employer's claims as to his lack of using his identification badge or signing in to work.

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 Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id. In this matter, claimant's testimony was not reasonable when compared with employer's reasonable evidence. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Here claimant did not produce any evidence to support his claims when he was the only person who could prove his presence. Employer couldn't easily prove claimant's lack of presence, but claimant could prove through documentation or testimony of coworkers or supervisors that he was at work. Claimant did not provide this.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning falsifying records. The last incident, which brought about the discharge, constitutes misconduct because claimant did not show for work for months although he reported that he was there. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated June 15, 2017, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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