

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SHARI L MCGHEE**  
Claimant

**GOODWILL INDUSTRIES OF NE IA INC**  
Employer

**APPEAL 19A-UI-04328-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/28/19**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge Misconduct

**STATEMENT OF THE CASE:**

On May 24, 2019, the claimant filed an appeal from the May 16, 2019, (reference 01) unemployment insurance decision that denied benefits based on her discharged for conduct not in the best interest of the employer. The parties were properly notified about the hearing. A telephone hearing was held on June 18, 2019. Claimant participated and testified. Employer participated through Hearing Representative Thomas Kuiper and witnesses Jenny Reuther and Alyssa McDonald. Employer's Exhibits 1 through 4 were received into evidence

**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 on November 2, 2019. Claimant last worked as a full-time community trainer. Claimant was separated from employment on April 24, 2019, when she was discharged.

On April 18, 2019, McDonald went to the employer's store location where claimant was scheduled to be working. When McDonald arrived at 9:10 a.m., claimant was not there. Claimant was scheduled to start work at 9:00 a.m. every day. McDonald waited a while longer, but when claimant still had not arrived by 9:24, she called claimant. Claimant said she was running late and had notified the store manager. McDonald then left the store at approximately 9:30 a.m. Another employee who reviewed security footage reported to McDonald that the cameras showed claimant entering the store at 9:37 a.m.

The next day McDonald was reviewing claimant's log entries. The log entries are used for a variety of purposes, including Medicaid billing and as timecard to pay employees for time worked. McDonald noticed that for April 18, 2019, claimant's log indicated she had started work at 9:00 a.m. When asked about this discrepancy, claimant indicated she put 9:00 a.m. in out of habit. McDonald's discovery prompted the employer to review claimant's log entries and security footage for the rest of the month of April. This investigation found that on seven other occasions in April 2019 claimant had arrived after 9:00 a.m. but written down 9:00 a.m. as the beginning of her work time and billable time. (Exhibits 2 through 4). The consequence of this was that Medicaid was billed for services that claimant was not providing and claimant was being paid for time she was not at work. McDonald explained this could result in the employer

being required to pay money back to Medicaid and the claimant being charged with Medicaid fraud. This conduct also violates the employer's policies governing Medicaid documentation and timecards. Both policies are outlined in the employee handbook, which claimant received most recently on October 8, 2018. Due to the seriousness of these violations, claimant was discharged from employment.

Claimant acknowledged she knew there was a difference between time she logged as billable time and time that was not billable, but denied she was ever made aware that her logs were being used to bill Medicaid. Claimant further acknowledged that, even though she was late multiple times in April, she put 9:00 a.m. down as her start time, but this was only because she was not properly trained on the employer's computer system. Claimant did not ask McDonald or any other supervisor what documentation she needed to do to reflect a late start 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. Benefits are denied.

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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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). 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). 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).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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 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. *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. *Id.* After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

While claimant may not have been aware that her time was being billed to Medicaid, she did know it was billable time and was therefore being billed to someone. Claimant also knew, on the dates she was late, she was being paid for time she was not working. This is theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant deliberately disregarded the employer's interest and knowingly violated a company policy. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

**DECISION:**

The May 16, 2019, (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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Nicole Merrill  
Administrative Law Judge

---

Decision Dated and Mailed

nm/rvs