

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSANNE F WENDTE
Claimant

FAMILY HEALTH CARE OF SIOUXLAND
Employer

APPEAL 16A-UI-00446-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/13/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Susanne F. Wendte, filed an appeal from the January 6, 2016, (reference 01) unemployment insurance decision that denied benefits based upon discharge for theft of company property. The parties were properly notified of the hearing. A telephone hearing was held on February 2, 2016. The claimant participated in the hearing. The employer, Family Health Care of Siouxland, participated through CEO Shanin McCabe-Harding.

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 was employed full time as a coding specialist from November 4, 2014, until this employment ended on December 15, 2015, when she was discharged.

As the employer's coding specialist, claimant received all the paperwork from the employer's urgent care sites. If paperwork came in that indicated a patient reported to urgent care but was not actually seen by a physician (due to leaving, going to the emergency room, or another reason), the paperwork would indicate that the patient was not seen. In those circumstances, claimant would enter the employer's computer system and cancel that patient's visit for that date. The employer maintained a verbal policy that employees were not allowed to cancel appointments in the system without supporting documentation. Claimant had followed this policy throughout her employment. Claimant testified that if she receives paperwork that should have a payment attached but does not, she takes the paperwork to management.

On October 16, 2015, a patient was seen at one of the employer's urgent care sites. This patient received medical care and paid \$115.20 for the visit. (Exhibit 2) Subsequently, on December 11, 2015, the patient came to the employer and requested a refund, as the patient's insurance covered the appointment. Claimant's supervisor, Lori Dorcey, went into the system to request the refund and discovered there was no documentation for this patient's October 16 visit. This prompted Dorcey to conduct an internal investigation. She went through the urgent

care paperwork batches, which she would have received directly from claimant, and did not find any paperwork indicating the patient's visit should have been canceled. She then entered the employer's practice management system and found that an appointment was scheduled for the patient on Friday, October 16, and it was canceled by claimant on Monday, October 19. Dorcey spoke with McCabe-Harding and verified that no other person could be responsible for the canceled appointment and the missing funds.

On December 15, Dorcey and McCabe-Harding met with claimant. They asked her about the missing funds and the canceled appointment, and claimant did not have any explanation. Claimant testified that she could not remember canceling the appointment, as it was several months prior. Dorcey and McCabe-Harding then discharged claimant from her employment.

Claimant does not contest that she canceled the appointment, as the employer's system showed her initials as the person responsible for the cancelation. She could not think of a scenario where she would receive a superbill by itself and then cancel the patient's appointment. Claimant testified that the superbills, patient information sheets, and collected funds sit in a drawer at each urgent care site from Friday night until Monday morning, when management retrieves them. She believes another staff member or a member of the cleaning crew may have taken the page with the payment attached to it.

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).

As claimant and the employer presented two different versions of the facts leading to the disappearing money, this case requires a credibility determination. 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, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds McCabe-Harding the more credible witness. While claimant presented an alternative scenario in which the money may have been removed from the drawer over the weekend, she did not bring the missing money to her employer's attention when she dealt with the paperwork on Monday, as she testified that she knew to do. Additionally, claimant did not indicate she had any reason to suspect that another employee or cleaning crew member had, in fact, taken the money. Furthermore, she still cannot explain why she would have canceled the appointment, having received a superbill documenting the patient's visit.

Claimant took \$115.20 that did not belong to her and canceled the patient's visit in the computer system that was connected with that money in an effort to hide the theft. This act was in deliberate disregard of her employer's interests. The employer has met its burden of showing claimant engaged in job related misconduct that disqualifies her from receiving unemployment benefits. Benefits are withheld.

DECISION:

The January 6, 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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/pjs