

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LINDSEY M LYON TIEMESSEN**  
Claimant

**QUAD CITIES PEDIATRICS PC**  
Employer

**APPEAL 18A-UI-06394-NM-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 05/06/18**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 29, 2018, (reference 02) unemployment insurance decision that denied benefits based on her discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on June 27, 2018. The claimant participated and testified. The employer participated through Clinic Manager Darcy Crafton and witnesses Brenda Schroeder and Morgan Foltz. Melissa Gamelin was also present on behalf of the employer but did not testify. Claimant's Exhibit A was 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 was employed part time as a medical assistant/front office worker from April 2, 2017, until this employment ended on May 4, 2018, when she was discharged.

On April 30, 2018, claimant was observed by her coworkers performing personal tasks during a majority of her work day. Foltz testified she saw claimant working on her resume, including printing it out several times and asking her for help with it. It was reported to Crafton that claimant also spent a significant amount of time doing other work for school and applying for jobs. The employer has a policy in place, located in the employee handbook, prohibiting personal use of work property without prior permission. Claimant received a copy of the handbook upon her hire.

Claimant testified she was unaware that her conduct could lead to discharge, as other employees, including Schroeder regularly performed personal tasks on work property during work time. Schroeder admitted that she, and other employees, would sometimes do personal tasks on work computers, but testified this was not an everyday occurrence and usually happened for only five to ten minutes during down times, as opposed to an entire shift. Due to

the extent of claimant's use of work time and work property for her personal tasks, the decision was made to end her employment.

**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 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions

constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant spent a significant amount of time during the workday on April 30, 2018 performing personal tasks while using company property in violation of company policy. While the employer’s witnesses conceded other employees had previously performed personal tasks during work time and using work computers, it was not anywhere near the same degree as claimant. It is not unreasonable for an employer to expect its employees to be focused on work-related tasks while at work and to refrain from using company property for personal tasks. Claimant’s conduct on April 30 shows a deliberate disregard for the employer’s interest. This is disqualifying misconduct. Benefits are denied.

**DECISION:**

The May 29, 2018, (reference 02) 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.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs