

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**AMANDA KAUFMANN**  
Claimant

**APPEAL NO. 13A-UI-12830-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLEARY BUILDING CORP**  
Employer

**OC: 10/27/13**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Amanda Kaufmann (claimant) appealed an unemployment insurance decision dated November 14, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Cleary Building Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 30, 2013. The claimant participated in the hearing with former employee Ed Swan. The employer participated through John Schinderle, Human Resources Manager and Kerry Keller, Branch Manager. Employer's Exhibits One through Four were admitted into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time branch secretary from October 10, 2012 through October 28, 2013 when she was discharged for falsification of time records. She sent an email on October 28, 2013 requesting to be paid for four hours she worked on the previous Saturday. The claimant said she could not clock in because the internet was not working. She testified in the unemployment appeal hearing that the internet was working but that the time clock was not working.

Branch Manager Kerry Keller was at the work site at 6:30 a.m. and left shortly after 7:00 a.m. He needed a telephone number so called the claimant at the work site around approximately 9:30 a.m. but there was no answer. Mr. Keller left a voice mail asking the claimant to return the call to him as soon as she could but there was no return call. Mr. Keller returned to the work site at 11:30 a.m. and no one was there. The facility was dark and the heat had not been turned up, which made it appear that no one had been there since he left. Mr. Keller looked at the answering machine and his voice mail message had not been played.

Mr. Keller questioned the claimant about her hours on Saturday and she said she worked from 8:00 a.m. to noon but then he explained he was there at 11:30 a.m. She then said if he only wanted to pay her for three and a half hours then do that. The claimant then said if he did not want to pay her for the hours on Saturday then to not pay her.

Human Resources Director Steve Schinderle investigated the incident and reviewed the claimant's time records. He found that she had failed to properly clock in or out 31 separate times from December 31, 2012 through October 26, 2013. The employer concluded the claimant was guilty of time theft and made the decision to discharge her. Employee theft results in immediate termination without prior warnings. The claimant signed her notice of termination on which she documented she worked from 8:30 a.m. to 11:30 a.m. on October 26, 2013. She said that her email which claimed four hours had a typographical error in it and she was going to correct it but was discharged before she had the chance.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. 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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged for falsification of time records or time theft. She requested to be paid for four hours of work although she admits she only worked three hours. The claimant said there is no proof that she did not work on October 26, 2013 but what is more important is that there is no proof that she did work that day. No one saw her there, she sent no emails although she admitted she read her emails, she did not answer a telephone call when she was supposed to be there, she did not listen to the voice mail that was left and she did not turn up the heat which was something the branch manager would have expected if someone had been working in the office.

If the time clock program was not working, it would have seemed prudent to send the email requesting payment for the hours worked on that Saturday as opposed to waiting until the following Monday. The claimant had a witness who had some strong opinions about the employer witnesses but he had been discharged prior to the date of the claimant's final incident and although he may have seen the claimant at a Casey's store after she reportedly left work, he could not actually verify she was at the work site.

The employer has met its burden in this case. Warnings are not necessary prior to a discharge for employee theft. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated November 14, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs