

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL GILBERT
Claimant

APPEAL NO: 16A-UI-06534-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN CAMPIN INC
Employer

OC: 05/15/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 3, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 28, 2016. The claimant participated in the hearing. Annie Van Houten, Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time office manager for Van Campin Inc. from May 1, 2009 to May 18, 2016. She was given the option of resigning or being terminated from employment May 18, 2016, and the claimant chose to resign.

In January 2016 the claimant switched from full-time to working 32 hours per week. The employer felt that approximately one year ago the claimant's "heart" stopped being in her job and she was not working to her capabilities. The employer cited one example of the claimant always previously helping her organize and plan the employer's Christmas party but stated she did not participate nearly as much in 2015 as she had in the past. The employer was also hurt that although employees always give her a gift at the Christmas party when she hands out bonuses, this year the claimant did not want to give her a gift and employees waited until the last day to get her a gift.

The employer stated that on several occasions the claimant came in and worked on the registers at the front of the store and then walked to the back where the pharmacy is located and stated loudly, "I hate my job" when customers were present. The claimant agrees that happened on occasion but denies there were customers there when it did. The employer would ask the claimant what was going on when she made that comment and try to help her resolve whatever issue was frustrating her.

In January 2016, the employer's father, who worked at the store occasionally, informed the claimant he was having carpal tunnel surgery and would not be able to work for a while. He asked the claimant, who did the scheduling, to find a replacement worker for him and the claimant stated that was not her problem anymore and he needed to find his own replacement.

In approximately April 2016 the employer had to amend its tax return because the claimant did not provide some of the required paperwork involving interest on a loan to the accountant.

The employer's pay periods are one week long. The employer testified the claimant falsified her time sheet the week ending April 30, 2016. She reported 40.25 hours that week when they had agreed the claimant would work 32 hours per week. The claimant was allowed to work from home and count additional time she spent away from the store performing work for the store on her time sheet. The employer uses a time clock but much of the claimant's time was handwritten and the employer contends the claimant should have had the employer initial her handwritten times on her time card. Either the claimant or the employer initialed the time cards of employees who missed punches on their time cards but the claimant had never had the employer initial her time card before. The employer never talked to the claimant about the situation. The claimant did not receive any verbal or written warnings for anything during her employment with this employer.

After considering the situation further the employer made the decision to discharge the claimant from her employment. She notified the claimant May 18, 2016, that she had the choice of resigning or her employment would be terminated and the claimant decided to resign her position at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer makes several allegations against the claimant, she did not document the dates of any of the events except for the week she believes the claimant falsified her time card. The employer cites the claimant's change of heart about her job and the business and used examples such as the Christmas party and gift, stating she hated her job, receiving customer complaints that the claimant was rude, the claimant's treatment of the employer's father with regard to finding a replacement to work his scheduled shifts when he underwent surgery, telling other employees the employer would be out of business in five years, and failing to report the interest on a loan which resulted in the employer having to amend its tax return. The employer never issued the claimant a verbal or written warning about her job performance.

The employer believes the claimant falsified her time sheet for the week ending April 30, 2016. The parties agree that the claimant was allowed to work from home part of the time and to indicate her time on her time sheet by hand as there was no way for her to use the time clock during those times. On those occasions the claimant had no other option beside writing the times in on her time sheet. The employer does not know if the claimant worked 40.25 hours the week ending April 30, 2016, or not and the claimant maintains she did work those hours and did not falsify her time sheet. The claimant should have asked the employer to initial the handwritten times she entered on her time sheet but that was not the practice between the claimant and the employer. Finally, the employer was aware of the situation the week ending April 30, 2016, but did not confront the claimant until May 18, 2016, at which time it terminated her employment. Because the incident of which the claimant is accused occurred nearly three weeks prior to the claimant's termination it cannot be considered a current act of misconduct as that term is defined by Iowa law.

The employer could not provide dates when the incidents cited occurred and never issued the claimant a verbal or written warning. The final incident involving the claimant's time card was not a current act of misconduct. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct. Therefore, benefits must be allowed.

DECISION:

The June 3, 2016, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs