

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARI A NORDSTROM**  
Claimant

**APPEAL NO: 17A-UI-08883-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LINK ASSOCIATES**  
Employer

**OC: 08/06/17**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 21, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 19, 2017. The claimant participated in the hearing. Jay Bruns, Corporate Operations Director; Linda Dunshee, Executive Director; Bob Munger, IT Director; and Veronica Trester, Accounting Administrator; participated in the hearing on behalf of the employer. Employer's Exhibits 1 through 14 were admitted into evidence.

**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 full-time clerical office specialist for Link Associates from December 27, 2016 to August 4, 2017. She was discharged for falsifying her time sheet and not being honest about when she arrived August 4, 2017.

On August 4, 2017, Executive Director Linda Dunshee entered the building and noticed the lights were off (Employer's Exhibit One). She looked at her cell phone to ascertain the time and noted it was 7:35 a.m. (Employer's Exhibit One). She could see the claimant coming up to the building and a few minutes later the claimant went in to Ms. Dunshee's office and said she tried to say good morning as she exited the restroom but Ms. Dunshee did not hear her because she was already in the elevator (Employer's Exhibit One). Ms. Dunshee said the claimant was not in the restroom because she saw her approaching the front door from the outside before she got on the elevator (Employer's Exhibit One). The claimant said she had already been in the building and used the restroom but returned to her car because she forgot her purse. Ms. Dunshee went to Accounting Administrator Veronica Trester to see what time the claimant clocked in and learned she clocked in at 7:29 a.m. according to her cell phone. Employees are only allowed to clock in using an ADT phone app, an office telephone, or an office computer. The employer only allows those methods of clocking in and out because it has several hundred employees and the use of those methods allow the employer to insure the employee is actually

at work when they clock in or out. The ADT phone app, for example, has GPS so the employer knows where the employee is when she clocks in but the employee's cell phone does not provide that information to the employer. The video showed the claimant first entered the building at 7:35 a.m., and had not been in the building prior to that time, did not enter the restroom and did not return to her car to get her purse.

Ms. Dunshee then went to IT Director Bob Munger to check the employer's surveillance video. The surveillance system time-keeping mechanism has a two and one-half minute lag time. The video showed the claimant arriving at 7:35 a.m. which was actually 7:37 a.m. Mr. Munger went back as far as the surveillance system allowed which was July 21, 2017. On July 21, 2017, the claimant used her cell phone to clock in and said she arrived at 7:30 a.m. when she actually arrived at 7:37 a.m.; on July 24, 2017, she used her cell phone to clock in and said she arrived at 7:35 a.m. when she actually arrived at 7:43 a.m. on July 26, 2017, she used her cell phone to clock in and said she arrived at 7:30 a.m. when she actually arrived at 7:39 a.m.; on July 27, 2017, she used her cell phone to clock in and said she arrived at 7:30 a.m. when she actually arrived at 7:37 a.m.; on July 28, 2017, she used her cell phone to clock in and said she arrived at 7:29 a.m. when she actually arrived at 7:34 a.m.; and on August 3, 2017, she used her cell phone to clock in and said she arrived at 7:29 a.m. when she actually arrived at 7:35 a.m. (Employer's Exhibit One and Employer's Exhibit Three). The claimant clocked in using her cell phone 19 times in July 2017 but clocked out using the correct method every time.

On July 1, 2017, the employer updated its employee handbook. Although the rules about clocking in with a cell phone did not change and was still prohibited, the employer also sent out a four page handout containing the changes to the handbook one week before holding mandatory meetings employees were required to attend to go over the changes (Employer's Exhibit Seven). It also provided employees with a form that told the employees how to get a copy of the new handbook (Employer's Exhibit Six).

The employer's handbook states, "At no time are employees authorized to call in to ADP from their cell phone without prior approval" (Employer's Exhibit Nine).

On August 4, 2017, Ms. Dunshee and Mr. Munger met with the claimant and notified her that her employment was terminated for falsification of her time sheet and not being honest with Ms. Dunshee. The claimant insisted she had been in the building but went back out to get her purse. The employer told her it had her on video and then the claimant stated she had been outside talking to her son on the phone in her car.

#### **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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant denies that she falsified her time sheet and was dishonest with Ms. Dunshee when asked about it August 4, 2017, the employer's video surveillance shows the times the claimant entered the building between July 21 and August 3, 2017. The claimant was able to falsify her time sheet because she used her cell phone to clock in rather than the approved phone app, her office phone or her office computer, all which would identify the claimant's location when she clocked in and prevented her from saying she was at work before she actually was at work.

The employer did not act on the claimant's incorrect time reporting issue previously because it was not aware of it until August 4, 2017, at which time it interviewed the claimant, reviewed the video, and took immediate action. The claimant was not terminated because she was a few minutes late on several occasions but because she was dishonest about the situation when discussing it with Ms. Dunshee August 4, 2017.

While the claimant maintains she did not know she could not use her cell phone to clock in, the employer went over the policy several times, it was contained in the handbook, and also in the

handout the employer gave employees when the new handbook was released in July 2017, even though there was no change to the cell phone reporting policy in the new handbook.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The August 21, 2017, reference 01, 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn