

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NORA MILLER
Claimant

STAPLES CONTRACT AND COMMERCIAL
Employer

APPEAL 14A-UI-12353-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/02/14
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 24, 2014, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 18, 2014. Claimant participated. Employer participated through (representative) Aftin Hulshof, Director of Direct Sales and Brenda Zenor, Department Manager. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an order expeditor beginning in October 2012 through November 6, 2014 when she was discharged.

The claimant's coworkers complained that she was clocked into her computer but was away from her desk for extended periods of time. The employer investigated. On October 8, 21 and 30 the employer observed the claimant and detailed her activity. They asked the receptionist to note when her visitor came into and left the building. On each of those days the employer investigated the claimant was away from her desk not working but with her visitor while logged on and in pay status. She would very specifically log out for her lunch period, return from her lunch, log back in to pay status and then immediately leave her desk for up to an hour and fifteen minutes to be with her visitor (who happened to be her spouse) while getting paid. The claimant did not ask a manager if what she was doing was acceptable behavior nor did she even report what she was doing to her manager. The claimant's excuse that it was better for her to walk around than to visit Facebook from her desk computer is simply not an acceptable reason for failing to work when she was getting paid to do so. On prior occasions when the claimant had completed her work, if she told a manager she was done, she was always given additional tasks to perform. The claimant had been given a copy of the employer's policies that clearly put her on notice that any type of falsification of work records, including time sheets or payroll records was ground for immediate discharge. On November 5 the claimant met with

Ms. Hulshof and Ms. Zenor admitted that she had been away from her desk and was not working when she was away.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant may have finished her work at her desk, but was obligated to go to her manager and ask for other work, not to wander around visiting with her husband. The claimant knew or should have known that she was falsifying her time card when she was not working but indicated she was. The handbook put her on notification that any falsification of time reporting could lead to her immediate discharge. The claimant's actions amount to theft of time from the employer and are sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The November 24, 2014 (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs