

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYCEE RHOADS

Claimant

APPEAL NO: 16A-UI-11000-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS DEVELOPMENT

Employer

OC: 09/11/16

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 29, 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 October 26, 2016. The claimant participated in the hearing. Chrystal Manzo, Program Coordinator and Emily Herron, Human Resources Director, participated in the hearing on behalf of the employer. Claimant's Exhibit One was 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 part-time community support staff member for Genesis Development from October 20, 2014 to September 14, 2016. She was discharged after the employer alleged she falsified her time sheet.

On September 14, 2016, the claimant emailed Program Coordinator Chrystal Manzo to state she was ill and would not be at work. Ms. Manzo went into the employer's computer system to enter the claimant's sick leave and observed that the claimant had already entered her hours worked for September 14, 2016. Ms. Manzo contacted the claimant and stated she had committed time card fraud and her employment was terminated immediately. The claimant stated she was working on paperwork and electronic documentation (E-docs) while at home ill, which is allowed, but the employer could not find any evidence substantiating that the claimant was working on her E-docs. The claimant had not received any verbal or written warnings for anything of a similar nature.

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).

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).

The claimant called in and reported she was ill and would not be in and then proceeded to work on her paperwork and E-docs. The employer allows employees to work on E-docs when they are home sick if they seek permission from their supervisor. In this instance, the claimant did not ask her supervisor if she could work on her paperwork but the employer's concern was that it could not find any evidence the claimant worked on her E-docs. Once an employee's employment is terminated the employer can no longer access her E-docs.

The claimant's testimony that she was working on her E-docs was persuasive. She does not know why the employer cannot locate her work and she had "no idea" her job was in jeopardy

because she indicated she was working on E-docs while at home ill September 14, 2016. Additionally, the claimant never received any warnings for doing the same thing in the past.

Under these circumstances, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The September 29, 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