

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MELISSA NEWMAN**  
Claimant

**MCFARLAND CLINIC PC**  
Employer

**APPEAL 23A-UI-07497-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/09/23**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge from Employment

**STATEMENT OF THE CASE:**

On August 1, 2023, claimant Melissa Newman filed an appeal from the July 28, 2023 (reference 01) unemployment insurance decision that denied benefits based on a determination that she was discharged from McFarland Clinic PC for dishonesty. The parties were properly notified of the hearing. A telephonic hearing was held at 11:00 a.m. on Thursday, August 17, 2023. Claimant Melissa Newman participated. Employer McFarland Clinic PC participated through witness Terri Hobbs, Urgent Care/Express Care Department Manager; and witness and representative Matt Franco, Executive Director of Human Resources. The employer submitted documents for the hearing but did not provide them to the claimant, so they were not admitted into the record.

**ISSUE:**

Whether claimant's separation was a discharge for disqualifying, job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on October 3, 2022. Most recently, she worked full-time hours as a medical lab technician. Claimant's employment ended on July 12, 2023, when the employer discharged her for falsifying her arrival time on numerous occasions.

On July 5, one of claimant's coworkers reported to Hobbs that claimant was "always late" to work. Hobbs pulled claimant's Kronos time clock entries on July 6, reviewed them, and noticed that over the ninety-day period pulled for review, claimant had thirty "clock-in edits." She compared each of claimant's Kronos entries to her scheduled start time and found she was on time for each of her shifts.

Hobbs then reviewed the security door badge-access records to see what time claimant arrived at work each day in the relevant ninety-day period. She compared these records against the Kronos records and found that claimant was late to work on thirty-two occasions within the ninety-day time period. Hobbs found a pattern within claimant's late arrivals: she was routinely late for her weekend shifts and for her 12-hour shifts, when she was scheduled to work from

7:00 a.m. until 7:00 p.m. Claimant's late arrivals varied in length of lateness, from twenty minutes to sixty-four minutes.

Additionally, Hobbs found that claimant failed to use the Kronos system to clock in whenever she arrived late. Instead, she would manually enter her time later, triggering an alert to Hobbs that a manual time entry was waiting for her approval. Kronos would not allow an employee to manually enter their own arrival and departure time after the fact. Instead, the employee made a manual entry, and then an alert was sent to Hobbs to approve that manual entry on the employee's time card. Hobbs routinely approved manual time entries in the course of her job. She did not audit these time entries or ensure their accuracy prior to "approving" their entry.

The employer has an employee handbook, which includes policies on timekeeping. Policy 3.20 reads in relevant part, "Any intentional misrepresentation of time or failure to report mistakes will result in disciplinary action." (Franco testimony) Claimant signed the employee handbook acknowledgment on October 3, 2022. Employees receive instruction on how to operate the Kronos system, and claimant never requested additional training or instruction.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged for theft of company time. Benefits are withheld.

Iowa Code section 96.5(2)(a) and (d) provide:

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 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.

...

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 even 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. Misconduct by an individual includes but is not limited to all of the following: ...

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

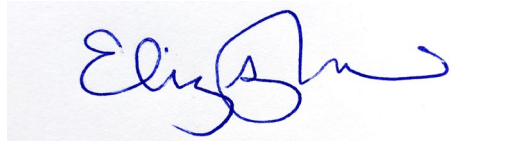
The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find both Hobbs and Franco gave credible testimony regarding claimant's end of employment. Hobbs conducted the investigation and was intimately familiar with the numerous instances of claimant entering the property at the secured door after her scheduled start time, failing to use Kronos to clock in, and then later making a manual time entry showing she arrived on time.

Claimant's explanation that she was told she was required to arrive on time was not credible. If claimant was given this instruction and believed it, I believe she would have reported her accurate arrival time, rather than consistently falsifying her arrival time. Instead, claimant repeatedly arrived to work late and then lied about her accurate arrival time in order to hide the fact that she was late to work. I do not believe claimant "forgot" when she reported to work on over thirty occasions, and I am similarly unconvinced that she believed it was not her responsibility to report her own time accurately.

The employer has established through credible testimony that claimant falsified her arrival time on numerous occasions. This resulted in claimant receiving compensation that she did not earn and patients having to wait to receive care, as claimant was not present during her scheduled work hours to perform her job. Claimant's actions amount to theft of her employer's funds (by submitting a fraudulent timecard) and intentionally misrepresenting her time worked, resulting in receiving unearned wages. This is disqualifying misconduct without prior warning. Benefits are withheld.

**DECISION:**

The July 28, 2023 (reference 01) unemployment insurance decision is affirmed. 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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Elizabeth A. Johnson  
Administrative Law Judge

August 18, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.