

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

YOLANDA M FISCHER
Claimant

**OTTUMWA COMMUNITY SCHOOL
DISTRICT**
Employer

APPEAL 17A-UI-04411-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/02/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 18, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 15, 2017. The hearing was rescheduled to allow the employer to receive the claimant's proposed exhibits. A second hearing was scheduled and conducted by telephone on May 18, 2017. The claimant participated personally. The employer participated through Nicole Kooiker, superintendent. Steve Zimmerman, associate principal and immediate supervisor to claimant testified. Deb Schlechter attended as an observer. Employer exhibits 1 through 5, and claimant exhibits A through J were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a teacher associate for students with special needs, and was separated from employment on March 30, 2017, when she was discharged for falsification of time records.

The employer has School Board Policy 404.1R1 which requires an employee to uphold ethical professional standards to ensure integrity in the workplace (Employer exhibit 1). The claimant made aware of this policy upon hire and was reminded of this policy with disciplinary warnings she received before discharge (Employer exhibit 1.)

The claimant was responsible for recording her time in two places; the first was a manual time card that she would submit to the employer. The other was through a Google document,

available online, where she could sign up for additional shifts to participate in after school activities with students needing supervision. The claimant acknowledged she would have to log on immediately after an activity ended to record her time on the Google document. The Google document also would time stamp entries. When the claimant submitted a monthly timesheet, there was a statement next to her signature which said, "I hereby certify that this timesheet is an accurate statement of the hours I have worked for the month."

The claimant was issued a first written warning on December 22, 2016, after she was observed manipulating times of school activities on the Google document/calendar where employees signed up for shifts. The employer stated as a result of the claimant's actions, employees missed shifts with students needing supervision and created conflict with peers and parents (Employer exhibit 1).

The claimant was issued a second written warning on February 10, 2017 (Employer exhibit 3) in response to 6 dates where the claimant had falsified her time card. The employer would check with bus transportation and activity directors to confirm the actual times of events against the claimant's reported time. The claimant admitted she had requested pay for hours not actually worked in those instances and "should not have done it." The claimant was made aware that her job was in jeopardy.

The final incident occurred when the claimant fabricated her time card on February 25, 2017 and falsely recorded her time in the Google document for an event on March 10, 2017. The claimant recorded she attended a show choir event with a student on February 25, 2017 and requested payment from 10:45 a.m. until 10:30 p.m. The employer investigated the trip due to the time listed and confirmed with the show choir director that the bus arrived back to the school at 8:15 p.m. The claimant was questioned by the employer about her whereabouts and first reported she helped unload the bus. At the hearing, the claimant said she was blindsided by the meeting and confused the trip in question, even though there were only 4 show choir events that season. The claimant confirmed however, that she did not unload the bus, and did not even ride the bus home with the show choir. Rather, she, the mother of the student she supervised and the student, left the event and went to Jordan Creek mall, where the claimant took the student shopping at Hot Topic, and they ate dinner, before driving back. The claimant rode back with the student and student's mother and arrived back at 10:30 p.m. The claimant argued she was with the student so she was unsure if she could or should report the time, even though the student was with her mother at the time, and they were not participating in the scheduled school activity.

The second incident occurred on March 11, 2017, when the claimant listed on the Google document that she had attended a show choir event from 10:30 a.m. until 4:15 a.m. The employer originally reported the bus arrived back at 3:00 a.m. but with the time change was 4:00 a.m. The claimant argued that daylight savings affected her ability to accurately report the time, but also stated she saw her phone turn over at 2:00 a.m. as other students on the bus reported it.

REASONINGS 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).

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 NW2d 661 (Iowa 2000).

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Honesty is a reasonable, commonly accepted duty owed to the employer. The administrative law judge recognizes that the claimant volunteered to take on additional shifts to supervise a student, which was not mandatory for her. However, the claimant had an obligation to be honest when requesting pay for time she spent with students. It cannot be ignored that a representative for the school district, the claimant was expected to supervise and set positive role model for the students she supervised.

The claimant admitted to previously falsifying her timecard and requesting pay for hours not actually worked with regard to the February 10, 2017 warning, and knew or should have known any further discrepancies would result in discharge.

The final incidents occurred on February 25, 2017, when the claimant requested payment for time when she left a school event with a parent and student to go shopping and dinner, and then drove home separately. While the claimant was technically with a student during this time, the administrative law judge was not persuaded by the claimant's argument that she could or should have reported this as time worked for payment purposes. The student she was to supervise was with her parent. The claimant was not at the event she signed for and deviated from the activity for several hours, even driving home separately. In light of the February 10, 2017 warning, the claimant could or should have asked Mr. Zimmerman if she had any concerns about how to document her time, including the shopping trip

The administrative law judge was further not persuaded by the claimant's "daylight savings" argument in light of acknowledging her phone clock turned over at 2:00 a.m. Even if the claimant's time was off by fifteen minutes or less on March 11, 2017, the claimant blatantly falsified her time card, and was dishonest when initially questioned, about her whereabouts on February 25, 2017.

The employer's evidence has established that the claimant was given repeated warnings about the need to follow the time and attendance policy. The claimant was given fair warning that she needed to change her behavior in order to preserve her employment. The employer's evidence is persuasive as it does establish that the claimant requested payment for work not performed. Her actions are theft of time from the employer and are conduct not in the employer's best interests. The claimant's final warning just a few weeks prior, put her on notice that failure to follow the policy would lead to her discharge. Based on the evidence presented, the claimant's repeated failure to follow the time and attendance policy after having been warned is evidence repeated violation of the employer's policy that rises to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The April 18, 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn