

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CRYSTAL S BRUNT**  
Claimant

**MERCY HOSPITAL**  
Employer

**APPEAL 18A-UI-03267-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/11/18**  
**Claimant: Appellant (4R)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 1, 2018, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 5, 2018. Claimant participated. Employer participated through human resources business Michael Wilkinson. Employer Exhibit 1 was admitted into evidence with no objection.

**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: Claimant was employed part-time as a communications operator from November 3, 2014, and was separated from employment on December 7, 2017, when she was discharged. Claimant worked a set schedule for the employer. Claimant worked on Saturday and Sunday, twelve hours each shift.

The employer has a policy that when employees leave the employer's premises, they need to clock out. The employer's time keeping system allows employees to clock in and out using their ID badge with a system on the wall or they can use the time keeping system on a computer. If an employee forgets to clock in or out, the employee is supposed to notify their supervisor to have their time card corrected. The employer also has a policy that prohibits employees from allowing anyone, including other employees, from using their ID badge. The employer follows a progressive disciplinary policy, but falsification of a time card or misuse of an ID badge are subject to automatic discharge. Claimant was aware of the employer's policies and procedures.

The employer did not have a supervisor working when claimant was working on the weekends. If claimant needed/wanted to leave the premises during her shift on the weekend, she was required to notify the on call supervisor by telephone or text message before she left the employer's premises. The supervisor would then either approve or not approve her absence. Claimant was aware of this procedure.

On December 3, 2017, claimant was away from her work station for an extended period of time (one hour and thirty-two minutes) without permission. Claimant did not clock out when she was away from her work station. Claimant did not notify her supervisor. The employer observed through surveillance video that claimant left the employer's building and campus. The employer discovered the incident on December 3, 2017.

On December 4, 2017, the employer started an investigation and discovered through surveillance video that claimant had also left her work station on three other occasions for extended periods of time (October 15, 2017 for four hours and twenty-one minutes without clocking out; October 22, 2017 for three hours and forty-six minutes without clocking out; November 25, 2017 for two hours and forty-five minutes without clocking out). Each time claimant was absent was one consecutive block of time. On each occasion, claimant left the employer's building and campus. The employer was able to observe claimant leave the building towards the parking lot and observe when she returned. Claimant did not notify a supervisor on any of the four incidents that she was leaving. Claimant was paid by the employer while she was away from her work station on each of the occasions. Claimant did not notify her supervisor that she forgot to clock out on October 15, 2017, October 22, 2017, November 25, 2017, and December 3, 2017. Also during the investigation, the employer discovered that on December 3, 2017 claimant allowed a male individual, who was not an employee, use her ID badge to come in and out of the building.

On December 7, 2017, the employer met with claimant regarding its investigation. Claimant could not provide an explanation during the meeting to the employer for her absences other than she was having family issues and errands to run. Claimant testified she was absent on one occasion for family reasons. Claimant testified on another occasion she was absent when she was getting the flu shot and picking up medication. Claimant did acknowledge the time clock rules and not allowing others to use her ID badge. Claimant told the employer that she did not tell the supervisor because she did not want to get in trouble. The employer then discharged claimant.

The administrative record reflects that claimant has not requalified for benefits and had other base period wages but the record is unclear as to whether she is otherwise monetarily eligible.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit admitted into evidence. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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).

Iowa Code section 96.5(12) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

12. *Supplemental part-time employment.* If the department finds that an individual is disqualified for benefits under subsection 1 or 2 based on the nature of the individual's separation from supplemental part-time employment, all wages paid by the supplemental part-time employer to that individual in any quarter which are chargeable following a disqualifying separation under subsection 1 or 2 shall not be considered wages credited to the individual until such time as the individual meets the conditions of requalification

as provided for in this chapter, or until the period of disqualification provided for in this chapter has elapsed.

Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). A warning weighs heavily toward a finding of intentional conduct. Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Myers v. Iowa Dep’t of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). “Theft from an employer is generally disqualifying misconduct.” *Quintin H Wyatt v. The University Of Iowa*, 15B-UI-08148-EAB, (dated September 17, 2015); *Ringland Johnson Inc. v. Employment Appeal Board*, 585 N.W.2d 269 (Iowa 1998). “Value is . . . not the issue” in determining misconduct and “a single attempted theft [may] be misconduct as a matter of law.” *Quintin H Wyatt v. The University Of Iowa*, 15B-UI-08148-EAB, (dated September 17, 2015); *Ringland Johnson Inc. v. Employment Appeal Board*, 585 N.W.2d 269 (Iowa 1998).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer’s policy prohibiting employees from allowing anyone to use their ID badge is reasonable. The employer’s policy requiring employees to clock out when they leave the employer’s premises is also reasonable. The employer’s procedure that required claimant to notify her supervisor if she was leaving the employer’s premises is also reasonable.

The employer has presented substantial and credible evidence that on four separate occasions (October 15, 2017, October 22, 2017, November 25, 2017, and December 3, 2017) claimant left the employer’s premises “for 1 ½ to 4 hours without clocking out or notifying [her] supervisor that [she] was leaving.” Employer Exhibit 1. Claimant was clearly aware that she was violating the employer’s policy because she admitted that she did not notify a supervisor because she “did not want to get in trouble.” Employer Exhibit 1. Furthermore, the employer presented substantial and credible evidence that on December 3, 2017, claimant also violated a known policy when she allowed a male individual to use her ID badge to access the employer’s building. See Employer Exhibit 1.

The employer presented substantial and credible evidence that claimant’s conduct on October 15, 2017, October 22, 2017, November 25, 2017, and December 3, 2017, was a “deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees[.]” Iowa Admin. Code r. 871-24.32(1)a. This is disqualifying misconduct even without prior warning.

Workers who are disqualified from part-time employment based upon the reason for the separation may be eligible to receive reduced unemployment insurance benefits, provided they have sufficient wage credits from other base-period employers to remain monetarily eligible, and provided they are otherwise eligible. *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016); codified on July 2, 2017, at Iowa Code § 96.5(12). In this event, the part-time employer’s account will not be assessed for benefits paid to claimant and the employer’s wage credits will not be considered in determining benefits for claimant until he or she has requalified by having worked in and been paid wages for insured work equal to ten times their weekly benefit amount.

Inasmuch as was discharged from employment due to job-related misconduct, the separation is disqualifying. Claimant has not requalified for benefits since the separation but may be otherwise monetarily eligible according to base period wages.

**DECISION:**

The March 1, 2018, (reference 02) unemployment insurance decision is modified in favor of the appellant. Claimant was discharged from employment due to job-related misconduct and has not requalified for benefits but may be otherwise monetarily eligible. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account shall not be charged.

**REMAND:** Claimant's monetary eligibility after the discharge of this part-time employment (employer (MERCY HOSPITAL) account number 069797-000) as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs