

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASMIN RUELAS
Claimant

OPPORTUNITIES UNLIMITED
Employer

APPEAL 17A-UI-03433-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/29/17
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 3, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on Wednesday, April 19, 2017. The claimant, Jasmin Ruelas, participated. The employer, Opportunities Unlimited, participated through Angela Branning, HR Manager; and Nicole Eaton, Residential Coordinator; and Alyce Smolsky of Equifax/Talx represented the employer.

ISSUES:

Is the appeal timely?
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 full time, most recently as a Residential Support Professional, from September 11, 2015, until January 19, 2017, when she was discharged for theft of company time. On January 14, 2017, claimant left her worksite for two hours without clocking out or telling a supervisor. Claimant testified that she had an unexpected issue arise related to her sister. Claimant alleges that she told a coworker that she was leaving, but the employer denies this happened and testified that her coworker had no authority to permit her to leave. After two hours, claimant returned to work. She finished her shift and then clocked out for the day. Claimant testified that it did not occur to her to tell her supervisor that she missed clocking out and back in. Both claimant and her supervisor, Nicole Eaton, testified that claimant had missed punches in the past and had properly reported this to the employer. Claimant gave contradicting statements regarding whether she knew that she had to report to her supervisor when she missed a punch.

Claimant testified that she received the unemployment insurance decision that denied benefits based on her separation from employment. She did not recall the date that she received the

decision. When she received the decision, she called customer service and was instructed to go into her local office. She testified that she probably did not appeal the decision by the deadline because she thought she did not need to appeal it. Claimant explained that she had never filed for unemployment before and was not familiar with the process.

REASONING AND CONCLUSIONS OF LAW:

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

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Here, claimant testified that this is the first time she has filed for unemployment. She did not initially appeal the disqualification decision, evidently because she misunderstood its significance. As claimant had never filed before, the administrative law judge will grant her leniency and consider her appeal to have been timely filed. Claimant is strongly cautioned to familiarize herself with the Unemployment Insurance Handbook and the unemployment process going forward.

The next issue is whether the claimant was discharged for disqualifying, job-related misconduct. The administrative law judge concludes she was, and therefore benefits are withheld.

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).

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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Certainly, it is reasonable to expect an employee to clock out when she leaves work. While emergencies do arise and an employee may legitimately forget to clock out at the time of departing to tend to an emergency situation, an employee who realizes she has done this should take immediate steps to correct the error. Claimant left due to an emergency and returned without clocking out or in. She then completed her shift and clocked out, at which point

she realized she had not documented her earlier departure. At that point, claimant should have contacted her supervisor or someone in management to report the error on her time card. Claimant's decision not to report this amounts to time theft and is disqualifying misconduct without prior warning. Benefits are withheld.

DECISION:

The March 3, 2017 (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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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