

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JERRILYN FINCH**

Claimant

**APPEAL 19A-UI-00577-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA ORTHOPAEDIC CENTER PC**

Employer

**OC: 12/16/18**

**Claimant: Appellant (1)**

Iowa Code § 96.5(2) – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jerrilyn Finch, Claimant, filed an appeal from the January 10, 2019 (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with Iowa Orthopaedic Center PC due to violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on February 6, 2019 at 3:00 p.m. Claimant participated. Employer participated through Michelle Stegeman, Director of Human Resources. Claimant's Exhibits A and B were admitted.

**ISSUE:**

Whether claimant's separation was a discharge due to 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 as a patient experience specialist from February 28, 2014 until her employment with Iowa Orthopaedic Center PC ended on December 21, 2018. (Claimant Testimony) Employer has a time keeping system policy which requires employees to use the time clock to clock-in when arriving at work and clock out when leaving work. (Stegeman Testimony) The policy is included in the employee handbook, to which claimant had access. (Stegeman Testimony)

On December 17, 2018, claimant left for her lunch break at 11:15 a.m. and returned at 12:11 p.m. (Claimant Testimony) Claimant clocked out for her lunch break at 12:11 p.m. and clocked in at 12:11 p.m. (Claimant Testimony) Claimant alleges she did this as a reminder to correct her times. (Claimant Testimony) Claimant entered a comment for her December 17, 2018 time clock entry for her clock out time to be corrected to 11:45 a.m. (Claimant Testimony) Claimant alleges this was a typo and should have asked for her clock-out time to be corrected to 11:15 a.m. (Claimant Testimony)

On December 18, 2018, claimant left for her lunch break at 10:57 a.m. and returned at 11:53 a.m. (Claimant Testimony) Claimant clocked out at 11:53 a.m. (Claimant Testimony)

Claimant alleges she intended to clock back in at 11:53 a.m. as a reminder to correct her times, but was not able to because she was busy working. (Claimant Testimony) Claimant clocked in at 12:11 p.m. (Claimant Testimony)

On December 19, 2018, claimant left for her lunch break at 11:14 a.m. and returned at 12:08 p.m. (Stegeman Testimony) Claimant clocked out at 12:08 p.m. (Stegeman Testimony) Claimant alleges she intended to clock in at 12:08 p.m. as a reminder to correct her times, but was not able to because she was busy helping a patient. (Claimant Testimony) Claimant clocked in at 12:35 p.m. (Stegeman Testimony)

Claimant alleges she entered a comment to correct her clock in and clock out times to reflect the lunch break that she actually took on both December 18 and 19, 2018, but her comments were not saved by the time clock system. (Claimant Testimony) When asked to explain why the system saved one comment and not the other two, claimant alleged that her comment for December 17, 2018 was saved because it was entered on December 17, 2018 and the comments for December 18 and 19 2018 did not save because they were entered on December 21, 2018. (Claimant Testimony) The time keeping system reflects claimant's comment for her December 17, 2018 time card entries was added to the system on December 21, 2018. (Stegeman Testimony) Claimant was only scheduled to take a half hour lunch the week of December 17 – 21, 2018. (Claimant Testimony)

On December 21, 2018, employer sent an email to all employees directing them to submit all corrections they had to their time cards to employer by 9:00 a.m. (Stegeman Testimony) At 9:15 a.m., claimant emailed employer regarding her December 17, 2018 lunch break; claimant's email did not make any corrections to claimant's time clock entries on December 18, 2019 or December 19, 2018. (Stegeman Testimony) On December 21, 2018, employer discharged claimant for time clock fraud. (Stegeman Testimony)

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

Iowa Code section 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 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:

- 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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000). Reporting time on one's timecard when one is not working is theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. Furthermore, a company policy against theft is not necessary; honesty is a reasonably, commonly accepted duty owed to the employer.

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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 the employer's version of events to be more credible than the claimant's version of those events. Each of claimant's erroneous time card entries reflected shorter lunch breaks than she actually took and, thus, would have resulted in claimant being paid for time that she was not actually working. Furthermore, claimant's erroneous time clock entries reflect claimant's lunch break lasted less than 30 minutes, which was the amount of time claimant was allotted for her lunch break; claimant's actual lunch breaks were 54 – 56 minutes in length.

Claimant's actions were not only a violation of a known company policy but were also acts of attempted theft from her employer. Claimant's actions constitute disqualifying, job-related misconduct. Benefits are denied.

**DECISION:**

The January 10, 2019 (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

---

Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, IA 50319-0209  
Fax: 515-478-3528

---

Decision Dated and Mailed

acw/rvs