

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**SHEILA STARKS**

Claimant

**APPEAL NO: 13A-UI-13786-B**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**

Employer

**OC: 10/20/13**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Sheila Starks (claimant) appealed an unemployment insurance decision dated November 19, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from The University of Iowa (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Cedar Rapids, Iowa on January 23, 2014. The claimant participated in the hearing. The employer participated through Mary Eggenburg, Benefits Specialist; William Millard, Manager of Environmental Services; and Joanne Higgins, Human Resources Manager of the Department of Environmental and Guest Services. Employer's Exhibits One through Seven were admitted into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time custodian from November 15, 2010, through October 18, 2013, when she was discharged for misuse of government property, theft of company property, insubordination, failure to follow directions, and neglecting job duties/responsibilities. She was suspended on October 1, 2013, after she parked in the Emergency Room parking lot that day, even though the parking lot is clearly designated with a sign which states, "Emergency Treatment Center Parking Only – Code Required For Exit." This parking lot is extremely small and the employer's policy also prohibits employees from parking there unless the employee is a patient or a family member of a patient being treated. Patients and family members must register their vehicles in the Emergency Room and when the patient is discharged, they are given a code to use to get out of the secured parking lot. Some individuals have permanent codes and this would include the emergency vehicles, as well as others.

The claimant's co-worker reported to their supervisor that she had parked in the Emergency Room parking lot on October 1, 2013. The supervisor reported it to Manager William Millard

and he happened to see the claimant leaving her work area that morning at 11:04 a.m. carrying her purse and coat. It was not her assigned break time and she had not informed her supervisor that she was leaving the building outside of her break time. Mr. Millard saw the claimant get into her vehicle which was parked in the Emergency Room parking lot. She exited the lot by using an exit code, which was inappropriately obtained. Surveillance recordings confirm the time she left and the fact that she left from the Emergency Room parking lot.

Mr. Millard repeatedly checked after that but the claimant did not return to her work area until 12:19 p.m. The time she returned was also recorded by surveillance cameras and she was gone for 75 minutes, 45 minutes longer than she was allowed. The claimant was previously warned about arriving late to work and returning late from her break. She received a written warning on June 11, 2013, for arriving late to work and returning late from break. The claimant was placed on a one-day suspension on July 17, 2013, for arriving late to work, not working in her assigned area and taking an unauthorized break. She explained that she was late because of her kids and was advised that if she needed to be late due to family reasons, she needed to talk to her supervisor in advance.

The Parking Department had issued the claimant a ticket on September 13, 2013 for inappropriately parking in the Emergency Room parking lot. The ticket confirms it was a Chevrolet with Iowa license plate 325XYS. The claimant denies receiving the warning but in a meeting on October 10, 2013, she admitted in front of four witnesses that she had received it. Jim Hudachek, Joanne Higgins, William Millard and Michelle Michalec were present for the meeting.

In the hearing, the claimant admitted she parked in the Emergency Room parking lot on October 1, 2013 and used an exit code that she obtained from a co-worker. When she was asked about the exit code during the investigation, she merely responded with a question and said, "Where would I get it." The code was from a locksmith but that information was never provided to the employer prior to the termination. The claimant's use of patient parking and the exit code constitute theft and warranted summary termination.

The claimant admits that on October 1, 2013, she used the Emergency Room parking lot and an exit code, which was not hers to use. She acknowledges she was not allowed to use either unless she was a patient. The claimant admits she left her work area at 11:04 a.m. without telling her supervisor she was leaving the building, which was a requirement. However, she contends she just moved her car and returned to work right after that. She testified that she did not leave for her lunch break until 11:45 a.m. but agrees she returned at 12:19 p.m., which was four minutes late. The claimant admits she received a previous written warning and a one-day suspension for arriving late to work and returning late from her breaks, but does dispute the facts listed in the suspension.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1). The claimant was

discharged on October 18, 2013 for misuse of government property, theft of company property, insubordination, failure to follow directions, and neglecting job duties/responsibilities. She disputes that she was gone an additional 45 minutes on October 1, 2013 but her own testimony confirms she was late returning from her break after she had received two previous warnings and that she knowingly parked in an unauthorized lot and used an unauthorized exit code. The claimant's actions show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated November 19, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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