

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SANTINA BENNETT

Claimant

APPEAL 17A-UI-10820-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM

Employer

OC: 10/01/17

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Santina Bennett (claimant) filed an appeal from the October 16, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination Genesis Health System (employer) discharged her for violation of a known company policy. The parties were properly notified about the hearing. A telephone hearing was held on December 1, 2017. The claimant participated personally and was represented by Attorney John F. Doak. Kala Holland participated on the claimant's behalf. The employer participated through Clinic Manager Jana Kolic, Clinic Supervisor Ronnie Nelson, and Director of Human Resources Renee Stolmeier and was represented by Attorney Jeffrey D. Wright. The Claimant's Exhibits A through D, F and G were admitted with no objection. The claimant did not offer an Exhibit E. The Employer's Exhibits 1 through 8 were received without objection. The Employer's Exhibit 9 was admitted over the claimant's objection based on relevance and Exhibit 10 was admitted over the claimant's objection based on hearsay. Additionally, the claimant's motion to consolidate the hearing for this appeal with appeal 17A-UI-10931-SC-T was granted without 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: The claimant was employed full-time as an Office Receptionist beginning on August 10, 1992, and was separated from employment on September 29, 2017, when she was discharged. The claimant typically worked until 5:00 p.m. Her office was located on the West Campus. The employer has a policy and practice that founded time card fraud will result in discharge.

On September 26, 2017, the claimant and another Office Receptionist Kala Holland attended an afternoon training session. It was led by Director of Human Resources Renee Stolmeier. As part of her housekeeping items, Stolmeier told the participants where to find the nearest time tracker so they could badge out if they were done with work at the end of the training.

The training session ended at 3:35 p.m. when it was scheduled to end at 4:30 p.m. The claimant and Holland took additional time to complete the surveys about the training. However, they completed their work and left the training by 4:00 p.m. They did not badge out after they finished training. They accompanied a former co-worker to her new office to gather her belongings to leave for the day. The claimant and Holland were observed by Clinic Manager Jana Kolic leaving the East Campus parking lot at 4:09 p.m.

Holland returned to the West Campus to drop the claimant off at her vehicle. Neither employee went in and badged out at that time. They also did not observe the time when they left the meeting. The following day, Clinic Supervisor Ronnie Nelson directed all employees who had any unreported time to correct their timesheets. The claimant entered her end time the day before as 4:30 p.m. Holland also entered her end time as 4:30 p.m.

On September 29, 2017, the employer met with the claimant and Holland to discuss the discrepancies in their timesheets. The claimant denied knowing what time she left work on September 26 and stated she was just following her co-worker Missi Sandoval's instructions to enter an end time of 4:30 p.m. The claimant and Holland were discharged at that time for falsifying their timesheets. While the claimant and Holland were gathering their personal belongings, Kolic and Nelson contacted Sandoval, who had not worked since the day of training due to kidney stones, to find out what time she left on September 26. Sandoval reported she left work at 4:00 p.m.

REASONING 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. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

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). 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). 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). 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).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The claimant has argued she was following the instructions given to her by Sandoval by way of Nelson. The claimant indicated she contacted Sandoval the day after the training at her office; however, Sandoval did not work the day following the training. Additionally, the claimant's reliance on a co-worker's assertion she should report or claim time she did not work on her timesheet without following-up with her supervisor is not reasonable.

Timesheet falsification 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. In this case, the claimant deliberately disregarded the employer's interest. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

DECISION:

The October 16, 2017, reference 01, unemployment insurance 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn