

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JILL A GROAT
Claimant

APPEAL 15A-UI-13286-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SECOND JUDICIAL DISTRICT DEPT OF C
Employer

**OC: 11/01/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 24, 2015 (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on January 7, 2016. Claimant participated personally and through witnesses Dean Groat and Barb Krug and was represented by attorney Stuart Cochrane. Employer participated through probation/parole supervisor John Groteluschen.

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 full time as a secretary from July 28, 1999 and was separated from employment on November 5, 2015; when she was terminated.

Employer has a policy that requires employees to accurately record hours worked in its time sheet program. Claimant was aware of the policy. Although employees are allowed to “flex” their time, they are required to work or take leave for 40 hours each week. Claimant was aware of this requirement.

During the third week of September 2015, one of claimant’s co-workers sent an email to probation/parole supervisor John Groteluschen stating claimant’s frequent absences were affecting her work. Groteluschen spoke with the employee the same day. The employee stated that she believed claimant was spending more time out of the office than her paid leave time would have allowed. Another co-worker had expressed similar concerns to Groteluschen a few months earlier. Thus, Groteluschen began an investigation regarding the amount of time claimant spent at work in comparison to the amount of time she recorded on her time sheet.

Groteluschen reviewed video surveillance footage of the parking lot and records from claimant’s electronic key fob which she used to access certain doors at the facility. Groteluschen learned that claimant often arrived to work around 8:00 a.m. Groteluschen did not assess the amount of

time claimant was gone for lunch each day. However, Groteluschen noticed a pattern of claimant leaving work early on a routine basis. When reviewing the video surveillance of claimant leaving early, Groteluschen was able to see claimant physically entering a vehicle and driving out of the parking lot. Groteluschen compared claimant's time records with the data from the video surveillance and security systems. Groteluschen concluded that during the ten-week period from July 31, 2015 through October 8, 2015, claimant was paid for at least 50 hours of time for which she did not work.

On October 22, 2015, Groteluschen interviewed two of claimant's co-workers. One of the co-workers stated she could not understand how claimant could be out of the office as much as she was and still have remaining leave time. The other co-worker reported that claimant often told her that she had come in early that day, as early as before 7:00 a.m., and that is the reason she was leaving early. Claimant indicated to the co-worker that Groteluschen was aware of the situation. However, claimant's key fob never indicated she was in the building earlier than 7:40 a.m. during the time period in question.

On October 22, 2015, Groteluschen also interviewed claimant. Groteluschen presented claimant with information showing that on September 21, 2015 claimant reported she worked nine hours but was only in the building for five and one-half hours. Claimant explained it was a one-time mistake in which she forgot to record her sick leave. When claimant was confronted with the other information Groteluschen had gathered, she stated "I guess I am too stupid to fill out my time card." Groteluschen put claimant on administrative leave while he compiled his investigative report.

Groteluschen also gathered records regarding claimant's computer activity. According to all of the records compiled, there was no day where there was any activity whatsoever on claimant's key fob or her computer after the video surveillance showed her getting inside a vehicle and leaving the parking lot.

While claimant was allowed to leave work at times to run errands, the amount of errands claimant could possibly have needed to run during the relevant time period would not have taken anywhere near 50 hours to complete.

On November 5, 2015, employer terminated claimant's employment due to false reporting of time records.

Claimant had no prior warnings about similar conduct.

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.

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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).

Claimant asserts that with the exception of September 21, 2015, she was at work or took leave for 40 hours per week from July 31, 2015 through October 8, 2015. Claimant asserts that whether her car was in the parking lot or not, is not a good indicator of her presence at work because often times her husband dropped her off at work after lunch. Claimant also argues that her fob activity is not a good indicator of whether she was at work because there were doors

she could enter without using her fob. Finally, claimant argues her computer activity was not a good indicator of whether she was at work because she could have been downstairs performing work not involving her computer. Whether claimant's car was physically in the parking lot is irrelevant to the reason she was terminated. Groteluschen did not count claimant's work hours based on whether her car was physically in the parking lot. Groteluschen counted claimant's work hours based on his visual observation of claimant entering a vehicle and exiting the parking lot. Of all the days observed, there was absolutely no activity on claimant's fob or computer after Groteluschen observed claimant driving away. Additionally, claimant's co-workers verified that she often left work early. This cannot be mere coincidence. I conclude Groteluschen's testimony regarding claimant's hours worked from July 31, 2015 through October 8, 2015, is more credible than claimant's testimony.

Claimant's failure to accurately report her work hours was in deliberate disregard of employer's interest in maintaining public trust.

Employer has established claimant was terminated for job-related misconduct.

DECISION:

The November 24, 2015 (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.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

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