

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CHYNNA N JONES**  
Claimant

**GENESIS HEALTH SYSTEM**  
Employer

**APPEAL 24A-UI-07899-CS-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/11/24**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On September 5, 2024, the claimant/appellant filed an appeal from the August 28, 2024, (reference 01) unemployment insurance decision that denied benefits based on claimant being discharged on July 22, 2024 for leaving work without the employer's permission. The parties were properly notified about the hearing. A telephone hearing was held on September 23, 2024. The claimant participated. Employer participated through Director of Human Resources, Brandi Tiesman. Claimant's exhibit A was admitted into the record.

**ISSUE:**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer on January 9, 2023. The claimant last worked as a part-time Patient Care Technician II. The claimant usually works in the operating room but after a rotator cuff surgery the claimant was moved to the intensive care unit to accommodate the claimant. The claimant was now required to work Mondays, Tuesdays, Thursdays and Fridays beginning at 9:00 a.m. until 5:30 p.m. The employer had a window where the employees could clock in or out 7 minutes before the start or end of their shift.

The claimant received a written warning on June 18, 2024 regarding clocking in no earlier than 7 minutes prior to her scheduled shift time.

The employer received a manual punch request from the claimant due to not punching out on July 11, 2024. The claimant requested a manual punch out at 5:23 p.m. due to her badge not working when she went to swipe out for the day. After receiving the request it was reported by other workers that the claimant's clock out time was not correct.

The employer conducted an investigation into the matter by reviewing video footage and claimant's badge use. The security team observed the claimant leave the ICU at 2:03 p.m. Claimant was observed going into the locker room and then exiting the locker room at 3:47 p.m. The claimant was then observed walking to her car at 3:48 p.m. The claimant was then seen driving off the property at 3:51 p.m. The employer did not observe the claimant return to the particular parking spot or go back into the building using the same elevator.

On July 15, 2024, the employer interviewed the claimant as part of their investigation. The claimant was informed that she was suspended pending the investigation.

The claimant admits the video evidence was correct. The claimant left the unit to conduct returns where she returns different equipment to different departments. The claimant went to the locker room to change out of her scrubs into street clothes because the claimant was taking a smoke break. The claimant then went to her car for her smoke break due to the campus being smoke free. The claimant then left to go to a different parking lot for her smoke break that is across the street. The claimant returned to work around 4:15 p.m. and left work at 5:21 p.m. (Exhibit A).

On July 22, 2024 the employer discharged the claimant for falsifying her timecard.

#### **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 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 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 Code section 96.5(2)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

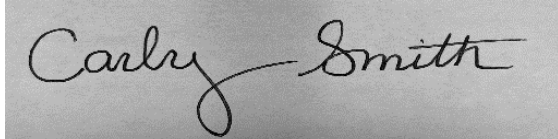
a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful 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.

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 the 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).

The parties dispute whether the claimant returned to work or not for the remainder of the day on July 11, 2024. The claimant provided GPS evidence from her phone establishing that she was at work until 5:21 p.m. It is undisputed the claimant requested that her clock out time be entered into the system as 5:23 p.m. Based on claimant's own evidence she did not work until 5:23 p.m. (Exhibit A). This means that the claimant was requesting to be paid two minutes more than she actually worked. Timecard theft 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. Benefits are denied.

**DECISION:**

The August 28, 2024 (reference 01) unemployment insurance decision is AFFIRMED. The claimant was discharged on July 22, 2024 for substantial job-related misconduct. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times their weekly benefit amount after July 22, 2024, and provided they are otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature reads "Carly Smith" in a cursive, flowing script.

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Carly Smith  
Administrative Law Judge

September 24, 2024  
Decision Dated and Mailed

CS/jkb

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.