

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AMANDA K OWENS**  
Claimant

**WHIRLPOOL CORPORATION**  
Employer

**APPEAL 20A-UI-00968-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/05/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On February 3, 2020, the claimant filed an appeal from the January 24, 2020, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 18, 2020. Claimant participated. Employer participated through senior human resources specialist Amih Avegnon Sallah.

**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 began working for employer on August 11, 2017. Claimant last worked as a full-time group leader. Claimant was separated from employment on January 3, 2020, when she was terminated.

Employer has an attendance policy stating that leaving the premises during work hours can lead to separation from employment. Claimant was aware of the policy.

Beginning in March 2019, claimant worked off-site at a warehouse every Friday and other additional days as needed. Claimant's supervisor allowed claimant to "flex" her arrival and departure times as long she worked a full eight hours. This practice violated the collective bargaining agreement, but the pair agreed to it anyway.

There was no time clock at the warehouse that claimant could punch into. Therefore, claimant made sure she worked eight hours at the warehouse. Claimant's supervisor then logged claimant into the timekeeping system as having worked from 7:00 a.m. until 3:30 p.m., even though her actual arrival and departure times varied.

On December 20, 2019, claimant began working at approximately 6:00 a.m. Claimant left work at around 2:30 p.m. It was reported that claimant left work prior to the ending time of 3:30 p.m.

Employer suspended claimant with pay on Monday, December 23, 2019, stating it was going to review surveillance footage to discover whether claimant had been shorting employer time while working at the warehouse.

On January 3, 2020, employer terminated claimant's employment.

Claimant had never been previously disciplined for similar conduct.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 96.5(2)a 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:

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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct

warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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).

In this case, employer did not present any credible evidence that claimant worked less than eight hours on the date in question, or on any other date where she worked at the warehouse. Claimant's arrangement with her supervisor to "flex" her time while at the warehouse may have violated the collective bargaining agreement, but claimant had never been previously warned about that issue and she was not flexing her time in deliberate disregard of employer's interests. Instead, claimant was getting the job done when help was available.

Employer failed to establish claimant was terminated for misconduct.

**DECISION:**

The January 24, 2020, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



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

February 25, 2020  
Decision Dated and Mailed

cal/scn