

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS CALVIN
Claimant

BLACKHAWK SERVICES CORP
Employer

APPEAL 22A-UI-06585-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/21/21
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Employer filed an appeal from the March 21, 2022 (reference 04) unemployment insurance decision that denied benefits finding claimant was discharged on February 11, 2022 for no disqualifying reason. The parties were properly notified of the hearing. A telephone hearing was held on April 26, 2022. Claimant did not participate. Employer participated through Teresa Pinell, Hearing Representative and witness. Shawn Whitmore, Maintenance Manager, and Laurey Gray, Human Resources Manager, were also witnesses for employer. Employer's Exhibits A – H were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed as a full-time Maintenance Mechanic from June 20, 2021 until his employment with Blackhawk Services ended on February 11, 2022. Claimant worked from 5:00 p.m. until 5:00 a.m. on a rotating schedule.

Employer has a policy that outlines inappropriate behavior and conduct in its handbook. (Exhibit D) The policy states that inappropriate behavior and conduct may result in disciplinary action up to and including termination of employment. (Exhibit D) Employer included "using the company's property and supplies, particularly for personal purposes in an excessive, unnecessary or unauthorized way;" and "using company equipment or property for personal reasons without proper authorization" as examples of inappropriate behavior and conduct. (Exhibit D) Claimant received a copy of the handbook. (Exhibit E)

On February 8, 2022, the nighttime production foreman observed claimant watching videos on a computer in the foreman's office when he should have been working. The foreman reported the issue to Shawn Whitmore, Maintenance Manager. Whitmore investigated the issue by comparing internet logs with claimant's daily worksheets. Whitmore found that claimant was watching videos on Netflix and YouTube for extended periods of time when he should have been working. (Exhibits A & B) The time claimant spent watching videos exceeded the time he was allowed for breaks during a shift. Claimant also watched videos during times that his checklists indicate he was performing machinery checks. Whitmore interviewed claimant who admitted to spending too much time watching videos at work.

On February 11, 2022, employer discharged claimant for violation of its policy prohibiting the use of company equipment for personal purposes in an excessive, unnecessary and unauthorized way. Claimant had been previously warned for sitting down in the blast freezer when he should have been working.

Claimant received no benefits after his separation from Blackhawk Services.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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 Admin. Code r. 871-24.32(1)a provides:

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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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 serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Reporting time on one's timecard when one is not working 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.

A company policy against theft is not necessary; honesty is a reasonable, commonly accepted duty owed to the employer. Claimant watched videos on the internet during times when he should have been performing work. Claimant was paid for the time that he was watching videos during work. Claimant's actions were contrary to employer's best interests and constitute theft. Employer discharged claimant for disqualifying, job-related misconduct. Benefits are denied.

Because no benefits were paid to claimant, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The March 21, 2022 (reference 04) unemployment insurance decision is reversed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The issues of overpayment, repayment and charges are moot.



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May 4, 2022
Decision Dated and Mailed

acw/acw