

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MIGUEL RAMIREZ AGUAYO**  
Claimant

**BUILDER SERVICES GROUP INC**  
Employer

**Case No. 21IWDUI2062**

**APPEAL 21A-UI-07066**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/03/21  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the March 3, 2021 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on April 30, 2021. The claimant, Miguel Ramirez Aguayo, participated personally. The employer, Builder Services Group, Inc., participated through Senior Paralegal for Labor and Employment for TopBuild Corp., Monica Rivas, and two witnesses, Mitchell Simonson, Branch Manager for West Des Moines and Cedar Rapids locations of Builder Services, and Clayton Lewis, Assistant Division Branch Manager for Des Moines and Cedar Rapids.

Employer's exhibits A through I were admitted. Official notice was taken of the documents in the administrative file.

**ISSUES:**

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:

Employer Builder Services Group, Inc., is a wholly owned subsidiary of TopBuild Corp. Claimant was employed full-time as a Superintendent at Employer Build Services. As a Superintendent his job duties included being a liaison between install staff and the management and production team. He also helped onboarding new employees and making sure that employees had training. Prior to becoming a Superintendent, Claimant worked as the Office Manager. Claimant was employed from January 6, 2014, until February 2, 2021.

The Employer has an Appropriate Conduct Policy, which is instituted to ensure the work place is free from inappropriate behaviors, and providing a work environment that fosters respect, collaboration, openness, safety and inequality. This policy includes a list of prohibited behavior

and activities, but the list is not considered to be comprehensive. (Exh. H). While there is no specific discipline delineated in the policy, the policy provides that inappropriate workplace behaviors "will be taken seriously and followed through to resolution." (Exh. H). This policy includes "[s]tealing or misuse of resources." (Exh. H). Employer also has a Business Ethics Policy, which has a list of activities that would reflect in a negative way on the employee's personal integrity or would limit the employee's ability to conduct business in an ethical manner. This list includes "[t]ime card misrepresentations." (Exh. I). "Management reserves the right to determine when an employee's action represents a conflict with the company's interests and will take whatever actions necessary to correct the situation, up to and including termination. (Exh. I). The Employer also has a Policy addressing Information Security – Access Control and Passwords. (Exh. G). This policy also states that disciplinary action for a violation of the policy corresponds with the severity of the incident. (Exh. G).

On December 16, 2020, Claimant was preparing to leave for vacation and did not come in to the office until sometime between 11:00 a.m. and 11:30 a.m. He was having a difficult time locating his passport. (Exh. A). There was a new hire who was waiting for him at the office, so his supervisors were looking for him. They needed his help with onboarding the new employee. Before he came into the office, Claimant had already given directions to the installers to get them started for the day. Lewis saw Claimant leave for the day sometime between 2:00 p.m. and 2:30 p.m. (Exh. D).

The Office Manager, Janel Faust, was reviewing the payroll records for the prior week while Claimant was on vacation. Employer uses Workbrain to keep track of employees' time records. She reviews the payroll records for the install staff on a weekly basis, usually on Tuesdays, because they are on a piece rate. The hourly rates are printed along with the piece rate employees. Claimant was an hourly employee. Because she had attempted to reach Claimant on December 16 and knew that he was not at work until late morning, she was surprised that his hours worked for that day were showing as a full day of eight (8) hours. Faust brought this to the attention of Donald Obara, who is the regional Human Resources representative, and Simonson. Obara conducted an investigation into the matter.

The investigation concluded that Claimant used his knowledge of the time keeping system, as he had previously been the Office Manager, to override the hours for December 16, 2020. They also concluded that he had used Lewis' computer to alter his time records as the two share an office.

Claimant did not have an opportunity to review the time sheets as he typically did. Claimant was authorized to change other employees' hours but not his own. Additionally, while he was on vacation, he communicated with Lewis to help with issues at the office.

On February 2, 2021, Employer terminated Claimant's employment.

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

For the reasons that follow, the administrative law judge concludes Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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 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 focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, 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). 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).

The Employer alleges that Claimant intentionally reported incorrect hours and falsified his time records. The date at issue in this matter is December 16, 2021.<sup>1</sup> The Employer's investigation concluded that Claimant had logged into his direct supervisor's computer and changed his hours. However, Employer did not present any evidence of how this occurred other than suggesting that Claimant accessed his supervisor's computer while Lewis stepped out of their shared office. This action would have had to occur on December 16 and could not have occurred on any day after that as Claimant was on vacation. This would have given Claimant a very short window in which to change his time records in Workbrain. While it is possible that Claimant entered his hours this way, no evidence was produced that this actually occurred. Additionally, Employer did not provide Claimant the opportunity to review his hours and discuss them with his supervisor. The Claimant credibly testified that Lewis would correct Claimant's hours in the system. While Lewis testified that Claimant was not allowed to do work when he was not at the office, it is clear that Lewis knew that Claimant worked while he was not in the office. Claimant kept in touch with Lewis while he was on vacation to make sure that things were running smoothly. Claimant also communicated with the install staff by phone, which he could do from locations other than the office. The evidence does not demonstrate that Claimant's actions were intentional and a substantial violation of the Employer's policies.

To disqualify Claimant from receiving unemployment benefits, it was Employer's burden to prove he acted with willful or wanton disregard of the Employers' interest, or exhibited recklessness or carelessness of such a degree as to suggest wrongful intent or evil design. No such evidence exists in the present case. Accordingly, the representative's decision must be reversed.

**DECISION:**

The March 3, 2021 (Reference 01) unemployment insurance decision is REVERSED. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Alla R. Mintzer  
Administrative Law Judge

May 10, 2021  
Decision Dated and Mailed

ARMZ/aa

Cc: Miguel Ramirez Aguayo, Claimant (by First Class Mail)  
Monica Rivas, Employer (By Email)  
Builder Services Group Inc., Employer (by First Class Mail)  
Nicole Merrill, IWD (By Email)  
Joni Benson, IWD (By Email)

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<sup>1</sup> Employer also stated that Claimant falsified his hours on December 7, 8, 11, and 14. Employer did not present any information regarding hours that were reported incorrectly on those dates.