IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

THOMAS F EARLS Claimant **HY-VEE INC** Employer	**APPEAL 22A-UI-05908-DZ-T** **AMENDED** **ADMINISTRATIVE LAW** **JUDGE DECISION** **OC: 01/30/22** **Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Thomas F Earls, the claimant/appellant, filed an appeal from the March 1, 2022, (reference 01) unemployment insurance decision that denied benefits because of a January 26, 2022 discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on April 15, 2022. Mr. Earls participated personally. The employer participated through Lane Logue, human resources lea, Ryan Beary, directory of grocery warehouse, and Judy Berry, Corporate Cost Control hearing representative. Employer's Exhibit 1 was admitted as evidence.

The administrative law judge previously issued a decision in this matter, dated April 25, 2022. The record in this matter has not been reopened. This amended decision is issued, based on the already closed record, to clarify that Mr. Earls is not eligible for benefits.

ISSUE:

Did the employer discharge Mr. Earls from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Earls began working for the employer on June 18, 2002. He worked as a full-time grocery order filler. His employment ended on January 26, 2022.

The employer's policy provides that employees must talk with their manager or supervisor if the employee needs to leave early, employee must call in to report absences, and employees must accurately report their time working. Mr. Earls acknowledged receiving a copy of the employer's policy in July 2019. The employer authorized Mr. Earls to take one thirteen-minute break at 10:00 a.m., a twenty-three-minute lunch break at 12:00 p.m., and a thirteen-minute break at 3:00 p.m.

In October 2021, one of Mr. Earls' family members was hospitalized and very ill almost to the point of death. Mr. Earls was one of the Power of Attorney representatives for the family member. Another one of Mr. Earls' family member was also in the hospital at the same time. Mr. Earls talked with his supervisor and his three-up supervisor about these matters. The supervisors told Mr. Earls about the employee assistance program. Mr. Earls called the employee assistance program and received some help. Mr. Earls also applied for Family Medical Leave Act (FMLA) leave.

At some point, other employees reported to the employer that they were looking for Mr. Earls for some time during his scheduled shift and could not find him. The employer began looking into Mr. Earls time at work. The employer reviewed video footage and clock-in, clock-in out data for January 1 through January 15. The employer concluded that Mr. Earls was clocking in at his usual time and clocking out at his usual time for those days, but he was not in his work area for periods of times outside of his approved break times. Mr. Earls was not in his work area, outside of approved breaks, for one hour or more on January 1, 4, 6, 7 and 11, and he was not in his work area, outside of approved breaks, for between thirty minutes but less than an hour on January 3, 5, 8, 10, 12, 13, 14, and 15.

The employer suspended Mr. Earls on January 26. Mr. Beary asked Mr. Earls what was going on. Mr. Earls initially told Mr. Beary he left his work area only to go the toilet. Mr. Earls eventually told Mr. Beary that he also left his work area because he was dealing with family matters, and his own depression and anxiety, which were being escalated by the family matters. Mr. Beary and Mr. Earls talked again on February 1. Mr. Earls stated that he was trying to do the right thing by his family but had messed up by the employer. The employer had disciplined Mr. Earls about three years prior for a similar issue. The employer terminated Mr. Earls' employment on February 6 for theft of time.

In December 2021, the employer denied Mr. Earls' application for FMLA leave. The employer mailed him a letter saying the same. Mr. Earls did not see the letter until after the employer terminated his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Earls from employment due to job-related misconduct.

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.

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 Iowa Supreme Court has held that this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 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 the claimant from 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 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).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. In this case, the employer has presented credible evidence that Mr. Earls took thirty-minutes to an hour or more off work each day without clocking out for two weeks. Mr. Earls was doing what was best for his family and himself during a difficult time. However, in doing so, he substantially disregarded his duties and obligations to the employer to accurately report his time working. Even if Mr. Earls did not intend to take some much time off work without clocking out, the frequency of Mr. Earls taking time off work supports the conclusion that his conduct meets the definition of disqualifying, job-related misconduct. Benefits are denied.

DECISION:

The March 1, 2022, (reference 01) unemployment insurance decision is AFFIRMED. The employer discharged Mr. Earls from employment for job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Daniel Zeno
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May 12, 2022
Decision Dated and Mailed

dz/scn