

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JAMES A COX**  
Claimant

**APPEAL NO. 10A-UI-04460-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VON MAUR INC**  
Employer

**Original Claim: 01/31/10  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 10, 2010, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 5, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Sarah Whitlock participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a stocker and housekeeper for the employer from February 17, 2003, to January 29, 2010. He was informed and understood that under the employer's work rules, employees could be discharged for deception in timekeeping records.

On January 18, 2010, the claimant was scheduled to work until 4.00 p.m. He ended up leaving the store at about 3:50 p.m. and he neglected to punch out. About 15 minutes later, he called his supervisor and told her that he forgot to punch out and had left at 4:00 p.m. He did not deliberately misrepresent his clock out time, as he believed it was about 4:00 p.m. when he left.

A coworker had complained to a supervisor on January 27, 2010, that he could not find the claimant on the afternoon of January 18. Management reviewed surveillance video and discovered the claimant leaving work 10 minutes early on January 18 but reporting to his supervisor that he had left at 4:00 p.m. The claimant had not been counseled previously regarding any similar conduct.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. No willful and substantial misconduct has been proven in this case. At most, the evidence establishes an isolated instance of negligence in not making sure of the time when he left work.

**DECISION:**

The unemployment insurance decision dated March 10, 2010, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw