

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY R CLARK
Claimant

APPEAL NO. 14A-UI-00751-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 05/26/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated January 17, 2104, reference 02, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on February 12, 2014. The claimant participated personally. The employer participated by Nikki Bell, administrative recruiter. The record consists of the testimony of Nikki Bell and the testimony of Wendy Clark.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a staffing agency. The claimant was assigned to a payroll position with a company called PSSI on August 7, 2013. The assignment ended on December 27, 2013, after the employer learned that the claimant had not properly recorded her hours on December 17, 2013.

On December 17, 2013, the claimant thought she left at 2:25 p.m. and wrote down 2:30 p.m. on her time card. The claimant actually left at 1:15 p.m. The claimant said she must have been mistaken when she looked at the clock. She did not intend to misrepresent her hours. On December 22, 2013, the claimant left at 2:00 p.m. but put 4:00 p.m. on her time card. The employer had sent people home early that day and told the claimant to put 4:00 p.m. on her time card.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion or simple negligence in isolated instances. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The claimant was discharged for an error on her timecard on December 17, 2013. She thought she had worked until 2:25 p.m. when, in fact, she left at 1:15 p.m. The administrative law judge accepts the claimant's testimony that she made a simple mistake on her time card. There is no evidence that she intended to falsify her time card and thereby claim wages for time she did not work. Since the claimant's act was simple negligence in an isolated instance, the claimant was not discharged for disqualifying misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated January 17, 2014, reference 02, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs