

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MARLANDO D SMITH**  
Claimant

**GENUINE PARTS COMPANY**  
Employer

**APPEAL NO. 21A-UI-17583-B2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/06/21  
Claimant: Appellant (2)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 9, 2021, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 19, 2021. Claimant participated personally. Employer participated by hearing representative Alyce Smolsky and witnesses Laura Love and Kent Creed. Employer's Exhibits 1-3 were admitted into evidence.

**ISSUE:**

Whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 7, 2021. Employer discharged claimant on June 8, 2021 because claimant was gone for an hour for his lunch break when he was scheduled to have a thirty-minute lunch.

Claimant worked as an assistant manager for employer, acting as a manger from the time the manager left work at 5pm until shift ended at 11 pm. On March 29, 2021 claimant signed for and received a warning for falsifying timecards regarding when his lunch was actually taken. Employer chose not to follow its progressive discipline policy and issued to claimant a final warning. Employer stated this decision for a final warning was because claimant's alleged impropriety involved theft.

On June 7, 2021 claimant found out he would need to pick up his son after his son finished his work. Claimant did not share this information with his manager. Claimant came into work a half hour before his shift was to start and worked the entirety of his shift, but took an hour for lunch, rather than his scheduled half hour. Claimant's manager had to stay late, until claimant came back from his lunch break a half hour late. The manager reported this to human resources the next day, and claimant was terminated.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. 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. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc.*

*v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. Here, the warning given to claimant on March 29 indicated claimant was being dishonest with his timecard, and therefore committing theft of time. There is no allegation that claimant's last act that led to his termination was a theft of time. Rather, claimant was terminated for not informing his manager that he came a half hour early to work to make up for the extended lunch that he planned on taking. As he didn't secure permission to take the extended lunch – even though he worked the shift scheduled plus the extended time to make up for the extended lunch – claimant did not secure prior permission for that action.

The question then becomes whether claimant's lack of sharing the need to be off for one hour when he had a scheduled half hour lunch is deemed to be misconduct when the claimant covered that same time gone by working an extra half hour that day. The administrative law judge finds that claimant's action was a good faith error in judgment rather than an act of misconduct. When looked at in its entirety, claimant is seen to be working the extra half hour to cover his time off – on the same day he took time off. Claimant had a good faith – though incorrect – belief that he needn't share his taking an hour off as long as he worked his scheduled nine hours for the day.

Employer's frustration is understandable. Claimant's manager was forced to wait around work when he had no idea claimant would be gone. Claimant received a warning concerning his falsifying time recording. In the warning, it says to notify the manager every day before you leave. That manager had not required that to happen. Claimant was also told to request time off in excess of the thirty minutes in advance. In addition to these requirements, the employer indicated claimant's dishonesty as to his time could lead to termination.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning taking an hour off for lunch without prior approval.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant was not intending to damage employer in any way. His work covered all necessary hours for June 7, but claimant's actions did disadvantage employer. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits as claimant's actions were not of the same type for which he was issued a final warning, and were not intended to be actions against employer.

#### **DECISION:**

The decision of the representative dated August 9, 2021, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



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Blair A. Bennett  
Administrative Law Judge

October 27, 2021  
Decision Dated and Mailed

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