



Ms. Vermeys returned to work the following Monday. The Employer questioned her about when she left the Friday event to which she repeatedly denied leaving at 4:30 p.m. (10:52-10:59) Instead, she insisted that she left at 5:15 p.m. (22:20-22:39; 22:48-22:55; 23:00-23:10; 25:04; 29:59-30:03; 30:49-30:55; 34:08-14:11) Although the Claimant had no prior warnings, the Employer terminated Ms. Vermeys for falsifying her timecard, which he considered theft of company time. (10:14-10:20; 33:48-33:56)

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

Iowa Code Section 96.5(2)(a) (2013) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993).

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 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events. First off, the Claimant was not forthcoming about her commitment to stay until 7:00 p.m. for the ribbon-cutting event. The Employer had a right to expect the Claimant, as the human resources manager, to represent the Employer at such events when the Employer could not be present.

Here, the Claimant understood that Mr. Schipull was not going to attend the event. Her decision to leave early and deny the timing of her early departure can reasonably be construed as an attempt to cover up the fact that she failed to 'work' all the hours she committed to, and for which she anticipated she would be getting paid. Although she purportedly admitted leaving early at 5:15 p.m., she only did so when the Employer informed her that 5:15 p.m. was the time he arrived and didn't see her. Her 'admission' was still false given the Employer's testimony that the videotape of the event showed she actually left 45 minutes earlier than she claimed. It is clear that the Claimant's statements and timecard were inconsistent with the videotape. For this reason, the Employer justifiably terminated the Claimant for falsifying her timecard.

The Claimant's argument that she was never warned about this behavior lacks merit. Any reasonable person would know that no Employer would condone theft of property, or time, as was the case at hand. For this reason, we conclude that the Employer satisfied their burden of proof.

**DECISION:**

The administrative law judge's decision dated April 13, 2016 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, she is denied benefits until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)'a'".

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