

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERESA VAN DUZER-SALES
Claimant

CINTAS CORPORATION NO 2
Employer

APPEAL 20A-UI-06421-ED-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/10/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 10, 2020 (reference 01) unemployment insurance decision that denied benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on July 22, 2020. The claimant, Teresa Van Duzer, participated. The employer, Cintas Corporation No 2 participated through hearing representative Melissa Hill and witness Amber Olson. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits. Employer's Exhibits 1-8 were admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant was employed full-time as a shuttle driver from September 4, 2012, until her employment ended on May 8, 2020. Claimant's direct supervisor was Bobbie Wheeler and then Brad Gerber.

Claimant was discharged from employment on May 8, 2020 due to code of conduct time card fraud. On April 16, 2020, claimant stopped her truck and parked for one hour and 17 minutes on her way back to the branch in Davenport, Iowa after dropping off and picking up product at Rockford, Illinois. On April 17, 2020, claimant again stopped her truck and parked for 46 minutes on her way to the branch in Davenport, Iowa after dropping off and picking up product from Rockford, Illinois. Claimant admitted to making the stops on April 16 and April 17. Claimant stated that she was figuring her hour requirements during these stops. Claimant had told her employer she was playing on her phone during these stops. Claimant was aware that tasks were available for her at the branch in Davenport, Iowa if she were to return before her 8 hours were completed. The employer had a policy regarding time clock theft, which was grounds for discharge. Claimant signed an acknowledgement that she had read and understood the employer's policies on April 17, 2018 and again on April 30, 2019. See Employer's Exhibit 4-5.

Claimant also received written warnings on March 4, 2020, May 14, 2019 and April 2, 2018 for poor work performance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related misconduct. Benefits are denied.

As a preliminary matter, the administrative law judge finds that the Claimant did not quit. Claimant was discharged from employment.

Iowa Code § 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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 claimant, 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

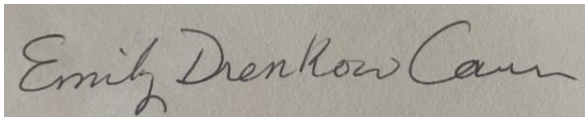
Claimant engaged in job-related misconduct when she parked her truck for one hour and 17 minutes on April 16, 2020 and again for 47 minutes on April 17, 2020 instead of proceeding to the Davenport, Iowa branch and completing her job duties. Claimant was aware that her job was in jeopardy for her failure to complete her job duties and time card theft when she received and acknowledged the company policy.

The employer has met its burden of proof of establishing current acts of disqualifying job-related misconduct. As such, benefits are denied.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The June 10, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for current acts of job-related misconduct. Benefits are denied.



Emily Drenkow Carr
Administrative Law Judge

July 31, 2020
Decision Dated and Mailed

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