

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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<b>HEATHER L MARTIN</b>	:	
	:	<b>HEARING NUMBER: 21B-UI-09083</b>
Claimant	:	
	:	
and	:	<b>EMPLOYMENT APPEAL BOARD</b>
	:	<b>DECISION</b>
<b>GENESIS HEALTH SYSEM</b>	:	
	:	
Employer	:	

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Employment Appeal Board would adopt and incorporate as its own the administrative law judge's Finding of Fact with the following modifications:

The Claimant was not given the timecard policy in writing. She never received any prior warnings about leaving the workplace without punching in and out when she informed her supervisor who adjusted her timecard.

The Claimant made her supervisor aware of her leaving and returning on February 3rd; and that she didn't have her badge on her. The Claimant expected her supervisor to adjust her timecard as she had done on other occasions.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.5(2)(a) (2019) 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 Claimant's version of events.

The Claimant is a long-term employee who never had problems, or prior warnings about timecards issues. The occasional incidents in which she left the workplace without clocking out or in due to not having her badge were easily corrected when she informed her supervisor. At no time was she counseled or warned that the manner in which she handled this was a policy violation. The final incident was handled no differently than the past few incidents when she inadvertently left her badge. The Claimant reasonably believed her supervisor would adjust her timecard on February 3rd as she'd done before under the same circumstances. It is clear the Claimant had no intention of falsifying her timecard, or she wouldn't have informed her supervisor of the situation. Based on this record, we conclude the Employer failed to satisfy their burden of proof.

**DECISION:**

The administrative law judge's decision dated June 24, 2021 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn

AMG/fnv