

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RASHAD A. EASON**  
Claimant

**MENARD INC.**  
Employer

**APPEAL 21A-UI-09799-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/31/21**  
**Claimant: Appellant (2)**

Iowa Code §96.5(2)a-Discharge/Misconduct  
Iowa Code §96.5(1)- Voluntary Quit

**STATEMENT OF THE CASE:**

On April 7, 2021, the claimant/appellant filed an appeal from the April 5, 2021, (reference 02) unemployment insurance decision that disallowed benefits based on claimant being discharged for violation of known company rule. The parties were properly notified about the hearing. A telephone hearing was held on June 18, 2021. Claimant personally participated in the hearing. Employer participated through Brian Miller. Exhibit 1 was admitted into the record.

**ISSUE:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 12, 2021. Claimant last worked as a part-time order pick up and deliver pick up team member.

On January 30, 2021, claimant was scheduled to work from 12:00 p.m. until 9:30 p.m. Claimant received a phone call that he had a family emergency and need to leave. Claimant informed his supervisor he needed to leave due to a family emergency. The supervisor approved of the claimant leaving. At 6:06 p.m. claimant is seen leaving the employer without clocking out. He is seen returning to work at 7:44 p.m. Claimant informed his supervisor that he needed to leave for the rest of the day due to the family circumstances. The supervisor approved the claimant leaving for the day. Claimant also informed his supervisor that he had forgot to clock out when he previously left. The supervisor on previous occasions had modified claimant's timecards when he had forgot to clock out or in for work. Claimant clocked out for the day at 7:51 p.m.

Employer has a policy prohibiting time theft. (Exhibit 1) Claimant received a copy of the policy during his orientation. (Exhibit 1). Claimant had never received a prior warning for failing to clock out. Claimant was separated from employment on January 31, 2021, when he was discharged for time theft.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*,

728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). The employer did not present a witness with direct knowledge of the situation. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant was in distress when he left the building and unintentionally failed to clock out. Claimant had received an upsetting phone call involving a family emergency that required him to leave abruptly. Claimant sought approval from his supervisor before leaving. Claimant returned to work to asked permission to leave for the day and he remembered to clocked out. Claimant testified that when he returned to work he told his supervisor he forgot to clock out. Due to the emergency situation and the fact he immediately told his supervisor of his error demonstrates that the failure to clock out was not an intentional act. Claimant testified that this has happened before and the supervisor has fixed his timecard and it was not a problem. Employer's witness did not have firsthand knowledge of the events that occurred on January 30, 2021. There was no employer witness that could dispute the claimant's testimony regarding getting approval prior to him leaving. There was no employer witness that could dispute that the Claimant immediately told his supervisor he forgot to clock out when he returned to work.

Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). However, there was no evidence that this was an intentional and deliberate act that warrants denial of unemployment benefits. The employer has not met its burden of proof establishing job-related misconduct. Benefits are allowed.

**DECISION:**

The April 5, 2021, (reference 02) unemployment insurance decision is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink that reads "Carly Smith". The signature is written in a cursive style with a horizontal line extending from the end of the name.

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Carly Smith  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau

July 1, 2021  
Decision Dated and Mailed

cs/mh