

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEREMY D DEIERLING**  
Claimant

**SONS OF SEVEN LLC**  
Employer

**APPEAL 17A-UI-10249-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/27/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 26, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on October 24, 2017. Claimant participated personally. Employer participated through co-owner Levi Deierling.

**ISSUE:**

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: Claimant began working for employer in June 2016. Claimant last worked as a full-time laborer. Claimant was separated from employment on August 18, 2017, when he was terminated.

Employer has a verbal policy prohibiting employees from making personal phone calls during work time. Claimant was aware of the policy. Employees are scheduled to work 40 hour per week, from 8:00 a.m. until 4:30 p.m. Employees are allowed a 30-minute, unpaid lunch break. Employees manually complete and sign time sheets. Employees are not allowed to work overtime hours without prior approval from an owner.

On August 18, 2017, claimant was assigned to work from 8:00 a.m. until 4:30 p.m. Claimant was working on a job site with supervisor Rick Daniel. Around noon, claimant called co-owner Levi Deierling to ask when and how he would receive his weekly paycheck. Levi Deierling asked claimant if he was on his lunch break. Claimant replied that he was. Levin Deierling informed claimant he would receive a hard copy paycheck that would not be directly deposited into his bank account. The phone call ended. Claimant then realized because the paycheck was not directly deposited into his bank account that he did not have money to purchase lunch. Claimant continued to work instead of taking his full 30-minute lunch break. At most, claimant stopped working for five minutes around lunch time. Supervisor Daniel did not take a lunch break either. At 4:00 p.m., Daniel informed claimant it was time to stop working as they had put in their eight hours for the day. Claimant and Levi Deierling had a series of phone calls at the

end of the day. At some point, claimant informed Levi Deierling that he and Daniel left the work site at 4:00 p.m. Levi Deierling asked claimant why he left work early and claimant explained that he did because he did not take a lunch break. Levi Deierling believed claimant was being untruthful because of their conversation around noon during which claimant stated he was on lunch break. Levi Deierling immediately terminated claimant. Later, claimant marked on his time card that he worked from 8:00 a.m. until 4:00 p.m. and did not take a lunch break. Levi Deierling was not aware of how the time card was completed until after he terminated claimant. Levi Deierling never confirmed or attempted to confirm with Daniel whether claimant took a lunch break.

Claimant had never been previously disciplined in writing regarding time card issues or issues relating to honesty.

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

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

Iowa Code § 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 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).

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 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, employer terminated claimant based on a belief that he was being dishonest. Claimant attempted to take a lunch break, but quickly returned to work after realizing he did not have money to purchase lunch as his paycheck had not been direct deposited into his account. Claimant then left work early and explained to employer he did not take a lunch break. Claimant's supervisor was on-site and aware of his actions and condoned them. Claimant acted reasonably in the situation and I do not find he was being intentionally dishonest with Levi Deierling when he explained what happened that day. The fact that claimant did not account for the less than five minute break on his time card is, at most, an isolated incident of poor judgment. In any event, Levi Deierling was not aware of the time card at the time of the termination and therefore the termination was not based on "stolen time." Employer failed to establish claimant was terminated for conduct that rises to the level of misconduct as defined by unemployment law.

**DECISION:**

The September 26, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Christine A. Louis  
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Decision Dated and Mailed

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