

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOSHUA H JOYCE**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 23A-UI-09112-PT-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/03/23**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated September 22, 2023, (reference 02) that held claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a hearing was held on October 10, 2023, at 8:00 a.m. The employer was represented by Corporate Cost Control Representative Kelly Ray and participated through District Manager Jeff Thompson and Store Manager Doug Rosendahl. The claimant participated personally, but left the hearing at 8:14 a.m. and did not call back and did not testify. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Whether the claimant was discharged for disqualifying, job-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for the employer on September 1, 2023. The employer discharged claimant on September 1, 2023, due to violations of the employer's timekeeping policy.

Claimant was employed as a part-time clerk in the employer's Chinese-food Department from December 29, 2022, until his employment with Hy-Vee Inc. ended on September 1, 2023. As a clerk, claimant was responsible for cooking and serving food to customers, cleaning the department, and restocking supplies as needed.

The employer has a written employee manual that includes policies on clocking-in and out of work and maintaining accurate timesheets. Pursuant to the policy, employees are required to clock-in and out of work by swiping a badge whenever they enter and exit the facility. However, the policy allows employees to log into a computer and manually enter or adjust their time in certain situations, such as when a badge reader fails to register an employee's badge swipe or if an employee forgets to clock-in or out of work. Claimant received a copy of the employee manual and was familiar with the employer's timekeeping policy.

Sometime in late-August 2023, the store manager was reviewing surveillance footage from August 24, 2023, and noticed that claimant left the employer's premises at 8:21 p.m. and did not return. The store manager checked claimant's schedule for that day and saw claimant had been scheduled to work until 9:00 p.m. The store manager then checked claimant's timesheet and noticed that claimant had not clocked-out with his badge, but had manually reported that he worked until 9:00 p.m.

The store manager then checked the surveillance footage for the next day, August 25, 2023, when claimant was again scheduled to work until 9:00 p.m. The surveillance footage showed claimant left work that day at 8:38 p.m. A review of claimant's timesheet reflected that claimant had manually reported that he worked until 9:00 p.m. on August 25, 2023.

The store manager contacted human resources and asked an HR representative to contact claimant and ask him what time he had left work on August 24, and August 25. The HR representative contacted claimant and asked claimant when he had left work on both days. Claimant reported that he had left work at 9:00 p.m. both days. Claimant's misreporting of his time on August 24 and 25 resulted in claimant being paid for an hour that he did not actually work. On September 1, 2023, the District Manager called claimant into a meeting, confronted claimant with the evidence from the employer's investigation, and informed claimant that his employment was being terminated effective immediately due to violations of the employer's timekeeping policy.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to disqualifying, job-related misconduct.

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.

Iowa Code section 96.5(2)d(14) 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:

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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 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). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

Reporting time on one's timecard when one is not working is theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law.

The employer has presented substantial and credible evidence that claimant misreported his time to reflect time that he did not actually work twice in a two-day period. Claimant's misreporting of his time resulted in claimant being paid for time he did not actually work.

A company policy against theft is not necessary; honesty is a reasonable, commonly accepted duty owed to the employer. Claimant submitted timecards reflecting that he should be paid for time that he did not work. Claimant's theft was contrary to the best interests of the employer. Based on the evidence presented, the administrative law judge concludes that claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

**DECISION:**

The September 22, 2023, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying, job-related misconduct. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



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Patrick B. Thomas  
Administrative Law Judge

October 16, 2023  
Decision Dated and Mailed

PBT/jkb

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.