

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MICHELE L HENGL
Claimant

APPEAL NO. 10A-UI-17500-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARCO LTD/WENDY'S
Employer

OC: 11/14/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated December 13, 2010, reference 02, that held she was discharged for misconduct on November 17, 2010, and that denied benefits. A telephone hearing was held on February 2, 2011. The claimant participated. Jason Larson, District Manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant began employment on June 21, 2003, and last worked for the employer as a full-time manager on November 17, 2010. As manager, the claimant had some authority to clock-in or clock-out employees who failed to do so.

The claimant clocked-out two employees on November 9, 2010 at a time varying from about 15 minutes to one-half hour after they left. The claimant's action was reported to the employer, who investigated. The employer concluded the claimant falsified time records and violated employer policy by clocking-out the employees after the actual time they left work.

When confronted by the employer on November 17, claimant admitted she clocked-out the workers, but she believed the time was close to when they quit work and left. Claimant said it was not unusual for a manager to tell an employee to leave work early and sometimes she would have to clock-out for the employee who forgot to do so. The claimant was also instructed not to manually adjust an employee's work time on the computer. Although the claimant had not been disciplined for this conduct, she was discharged. The employer did not later adjust the two employees' work time/pay.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on November 17, 2010.

Considering claimant had authority to clock-out employees and let them leave work early, any violation cited by the employee is a minor offense; and absent a warning/discipline, does not constitute job-disqualifying misconduct. This was an isolated instance that might be attributable to poor judgment, but not an intentional policy violation.

The claimant was a long-term employee who had a discipline-free work record. Allowing two employees to leave work and clocking-out them out is of no personal benefit to claimant. The employer did not offer any statements from the employees that the claimant intentionally violated policy or to refute her explanation why she did so. The employer's conclusion claimant was hiding her conduct is not supported by the evidence.

DECISION:

The department decision dated December 12, 2010, reference 02, is reversed. The claimant was not discharged for misconduct on November 17, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw