

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**BARBARA K MATHIS**  
Claimant

**APPEAL 17A-UI-10272-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MUSCATINE COMMUNITY SCHOOL  
DISTRICT**  
Employer

**OC: 08/27/17  
Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 5, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on October 24, 2017. Claimant participated. Employer participated through human resource director Jill Bourquin. Employer's Exhibit 1 was received.

**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 was employed as a full-time full custodian through August 24, 2015. On August 18, the issue of taking unused district property for personal use came up in conversation between claimant, Spies and head custodian Lisa Parsons. Spies told claimant the district does have a policy about getting rid of unneeded equipment and does not give it away. Parsons also explained to her that the district does not get rid of property by giving it away. Her last day of work was August 21, 2015. On that date, Jefferson Elementary teachers Mackenzie Strouf and Sarah Manjoine observed claimant put a district computer and monitor in the trunk of her car in the morning. Strouf reported it to principal Corry Spies, who notified Bourquin. Later that morning facilities and maintenance manager Jeff Miller and Spies asked claimant why she took the computer. She said she thought Miller had given her permission to do so in June 2015, at a district training meeting. Miller did not do so but told her he would check on procedures and get back to her. He did not do so before August 21. Spies placed her on paid administrative leave and went with Miller and West to her car to unload the computer and monitor, but found two district computers and two monitors. (Employer's Exhibit 1) She was discharged for theft of district property.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

### **Causes for disqualification.**

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 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).

Claimant argued that former coworker Kristin Lick corroborated her position that she was given permission to take the computers because Lick recalled supervisor Mike West, a subordinate of Miller, giving permission in 2014, to take items from the high school. (Claimant's Exhibit A) Lick was not employed by the district in June 2014, when claimant alleged Miller, not West, gave her permission. She claims to have misunderstood Miller, but at least two people told her in advance that the district property would not be given away. Further, she did not even have permission to purchase the electronics. Thus, in spite of the employer's failure to present direct testimony from West, Miller or Spies, the combination of written statements, when compared to claimant's incredible recollection of the events, establishes the employer's evidence as credible. The employer is entitled to establish reasonable work rules and expect employees to abide by them. Taking property of another without permission is considered theft or conversion. Even in the absence of a work rule, theft of employer's property is considered disqualifying misconduct. The employer has presented substantial and credible evidence that claimant engaged in theft of the employer district's property after having been told it would not be given away. This is disqualifying misconduct.

**DECISION:**

The October 5, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/rvs